DOCUMENT RESUME

ED 405 130 PS 025 141

TITLE	Children's Privacy Protection and Parental Empowerment Act of 1996. Hearing on H.R. 3508 before the Subcommittee on Crime of the Committee on the Judiciary. House of Representatives, One Hundred Fourth Congress, Second Session. (September 12, 1996).
INSTITUTION	Congress of the U.S., Washington, D.C. House Committee on the Judiciary.
REPORT NO	ISBN-0-16-054044-5
PUB DATE	97
NOTE	97p.; Serial No. 106. Contains several pages of small print.
AVAILABLE FROM	U.S. Government Printing Office, Superintendent of Documents, Congressional Sales Office, Washington, DC 20402.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC04 Plus Postage.
DESCRIPTORS	*Access to Information; *Children; Computers; Crime; Federal Legislation; Hearings; Internet; Marketing; *Parent Rights; Prisoners; *Privacy
IDENTIFIERS	Congress 104th; Direct Mail; Mailing Lists; Pedophilia; Personal Information Systems

ABSTRACT

This hearing examined issues related to H.R. 3508, the Children's Privacy Protection and Parental Empowerment Act of 1996, which prohibits the sale of personal information about children without parents' written consent, and the use of prisoner labor to process personal information about children. The Act also establishes a criminal penalty for exchanging information about a child while knowing or having reason to believe that the information will be used to harm the child. Witnesses included representatives from the direct mail industry and professional organizations, a public policy research group, a child protection organization, and a university; Marc Klass, father of murder victim Polly Klass; New Jersey Representative Bob Franks; and a law enforcement officer. Proponents of the legislation contended that self-regulation has not succeeded in establishing adequate privacy safeguards. Commercial list companies are compiling an elaborate data base on every American child; these data are available for purchase by any interested party and over the Internet. Such availability invades children's privacy and creates a potentially dangerous situation for them because such information is available to pedophiles, and especially because prison labor is often used to process consumer surveys into list data. Opponents to the proposed legislation questioned that commercial mailing lists could be used by pedophiles to locate victims and contended that the legislation would restrict university identification of potential students, limit distribution of educational materials such as children's books, and would interfere with military recruitment. Appendices contain additional statements, letters, or materials submitted. (KDFB)

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CHILDREN'S PRIVACY PROTECTION AND PARENTAL EMPOWERMENT ACT OF 1996

ED 405 130

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

H.R. 3508

CHILDREN'S PRIVACY PROTECTION AND PARENTAL EMPOWERMENT ACT OF 1996

SEPTEMBER 12, 1996

Serial No. 106

PS 025141

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

39-675 CC WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-054044-5

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CHILDREN'S PRIVACY PROTECTION AND PARENTAL EMPOWERMENT ACT of 1996

THURSDAY, SEPTEMBER 12, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 2237, Rayburn House Office Building, Hon. Bill McCollum (chairman of the subcommittee) presiding.

Present: Representatives Bill McCollum, Steve Chabot, Charles E. Schumer, Zoe Lofgren, and Sheila Jackson Lee.

Also present: Paul J. McNulty, chief counsel; Glenn R. Schmitt, counsel; Aerin D. Bryant, research assistant; Audray Clement, secretary; Tom Diaz, minority counsel; and Melanie Sloan, minority counsel.

OPENING STATEMENT OF CHAIRMAN McCOLLUM

Mr. MCCOLLUM. The Subcommittee on Crime will come to order.

This morning we will examine issues related to H.R. 3508, the Children's Privacy Protection and Parental Empowerment Act of 1996. Today's hearing is a continuation of the efforts of this subcommittee to address public safety issues involving the most vulnerable members of our society, our children.

Last year the subcommittee held an oversight hearing looking at the important work of the Center for Missing & Exploited Children and the FBI's Child Abduction/Serial Killer Unit. In addition, the subcommittee has conducted hearings on related child crimes legislation, including the Sexual Crimes Against Children Prevention Act, Crimes Against Children and the Elderly, Megan's law, and Federal recordkeeping of convicted sex offenders.

Today we will consider H.R. 3508, a bill that prohibits the sale of personal information about children without their parents' written consent. The primary objective of this legislation is to give parents more control over direct marketing information about their children and to prevent such information from getting into the hands of those who would use it for harm. The bill also prohibits the use of prison inmate labor to process personal information about children, and establishes a criminal penalty for exchanging information about a child while knowing or having reason to believe that the information will be used to harm the child.

Computer technologies and Internet innovations have unveiled a world of information that is literally just a few keystrokes or clicks away. For the marketing industry, these technologies have created

new ways of communicating and interacting with consumers, including children. Commercial list vendors are able to compile sophisticated, highly personal consumer profiles of people's hobbies, buying habits, financial information, who they contact, when, and for how long. Data base lists are the backbone of this multimillion-dollar consumer marketing industry. These marketing strategies, however, present unique privacy and public safety considerations, especially when the information in these data bases concern children.

Some of the questions I hope to have answered today include: what kind of information is being collected from children in the online marketplace and other sources? How is it being used? What safeguards exist to prevent such information from falling into the wrong hands? Can and do pedophiles or child molesters gain access to children through the use of commercial mailing lists?

Children must be protected from becoming victims of sexual predators. Today we will hear from a witness who will demonstrate the ease with which this personal information could be obtained. We'll also hear about unsafe practices of some commercial list vendors which, if left unchecked, could lead to tragedy.

At the same time, commercial database lists are not an evil in and of themselves, and, in fact, appear to be frequently used to actually benefit children. According to the National Center for Missing & Exploited Children, commercial database lists are often used by law enforcement to locate missing or abducted children.

Moreover, we will hear from witnesses who represent agencies that provide beneficial services to children and their families. Colleges and universities, financial aid services, the armed forces, and parks and recreation sports clubs all recruit and advertise through the use of mailing lists. Solutions that prohibit the distribution of personal information about a child without parental consent could deprive families of important services and could also deprive law enforcement of a useful tool to find missing or abducted children.

The question before us today is whether there are ways in which we can insure children's safety and privacy without disabling the process by which thousands of American businesses and nonprofit organizations provide an array of products, services, and educational opportunities that benefit families and children.

[The bill, H.R. 3508, follows:]

104TH CONGRESS
2D SESSION

H. R. 3508

To amend title 18, United States Code, to prohibit the sale of personal information about children without their parents' consent, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1996

Mr. FRANKS of New Jersey (for himself, Mr. FROST, Mr. HUTCHINSON, Mr. NEY, Mr. MCHUGH, Mr. CALVERT, Mr. FAZIO of California, Mr. WELDON of Florida, and Mr. HORN) introduced the following bill, which was referred to the Committee on the Judiciary

---

A BILL

To amend title 18, United States Code, to prohibit the sale of personal information about children without their parents' consent, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Children's Privacy Protection and Parental Empowerment Act of 1996".

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SEC. 2. PROHIBITION OF CERTAIN ACTIVITIES RELATING TO PERSONAL INFORMATION ABOUT CHILDREN.

(a) IN GENERAL.—Chapter 89 of title 18, United States Code, is amended by adding at the end the following:

"§ 1822. Sale of personal information about children

"(a) Whoever, in or affecting interstate or foreign commerce—

"(1) being a list broker, knowingly—

"(A) sells, purchases, or receives remuneration for providing personal information about a child without the written consent of a parent of that child, or

"(B) conditions any sale or service to a child or to that child's parent on the granting of such a consent;

"(2) being a list broker, knowingly fails to comply with the request of a parent—

"(A) to disclose the source of personal information about that parent's child;

"(B) to disclose all information that has been sold by that list broker about that child and all other information in the possession of that list broker, except information which under

common law, statute, or the Constitution may not be disclosed; or

"(C) to disclose the identity of all persons to whom personal information about that child has been disclosed;

"(3) being a person who, using any personal information about a child in the course of commerce that was obtained for commercial purposes, has directly contacted that child or a parent of that child to offer a commercial product or service to that child, knowingly fails to comply with the request of a parent—

"(A) to disclose the source of personal information about that parent's child;

"(B) to disclose all information that has been sold by that person about that child and all other information in the possession of that individual, except information which under common law, statute, or the Constitution may not be disclosed; or

"(C) to disclose the identity of all persons to whom personal information about that child has been disclosed;

"(4) knowingly uses personal information about a child that was collected from the child by the user

for commercial purposes in connection with a game, contest, or club, sponsored by that user, to contact that child other than in direct connection with that game, contest, or club, without the permission of a parent of that child;

"(5) knowingly uses prison inmate labor, or any worker who is registered pursuant to title XVII of the Violent Crime Control and Law Enforcement Act of 1994, for data processing of personal information about children; or

"(6) knowingly distributes or receives any personal information about a child, knowing or having reason to believe that the information will be used to abuse the child or physically to harm the child;

shall be fined under this title or imprisoned not more than one year, or both.

"(b) A child with respect to whom a violation of this section occurs may in a civil action obtain appropriate relief, including statutory money damages of not less than $1,000. The court shall award a prevailing plaintiff in a civil action under this subsection a reasonable attorney's fee as a part of the costs.

"(c) As used in this section—

"(1) the term 'child' means a person who has not attained the age of 16 years;

"(2) the term "parent" includes a legal guardian;

"(3) the term 'personal information' means information (including name, address, telephone number, social security number, electronic mail address, and physical description) about an individual identified as a child, that would suffice to locate and contact that individual; and

"(4) the term 'list broker' means a person who, in the course of business, provides mailing lists, computerized or telephone reference services, or the like containing personal information of children."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 89 of title 18, United States Code, is amended by adding at the end the following new item:

"1822. Sale of personal information about children."

Mr. MCCOLLUM. Today's witnesses should provide a full discussion of these and related questions. I look forward to their testimony. And if Ms. Jackson Lee would like to make an opening comment, I would recognize her at this time.

Ms. JACKSON LEE. I thank the chairman very much, and I'd like to ask unanimous consent to revise and extend my remarks.

Mr. MCCOLLUM. Without objection, so ordered.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. Let me just overall appreciate the opportunity that the Subcommittee on Crime and the ranking member have given us to be able to address the issues concerning children and crime throughout the 104th Congress.

As I look at H.R. 3508, it comes to mind in review of the legislation that the one thing that we should focus on is that children are innocent and in many instances helpless. The interesting point about this privacy protection is to be able to say that children under 16 should, in fact, be protected and that we should have no embarrassment about it. The question of whether children are consumers in their families and whether or not this is a multibillion-dollar industry pales in the shadow of protecting children from the wrongful intrusion of pedophiles and those who would do them harm.

I certainly think in this hearing, Mr. Chairman, that we should be cognizant and concerned about the necessity of getting information to families and children that will benefit them. At the same time, I'm appalled at some of the violations that we've seen by way of inmates and others who have been able to secure huge numbers of data lists that have invaded the privacy of our helpless children.

I would also say that at the same time that we may categorize children as consumers, the biggest consumers may be of our toy market, certainly we recognize that children also have word of mouth; they have the electronic media, and, therefore, should we not realize that children will still be consumers if they have the kind of information that is not intimidating to them or does not result in harm or even death.

So I thank the witnesses who have come this morning and want them to recognize my seriousness on this issue.

Mr. Chairman, let me offer an apology as I am in two hearings at once, and so that if I am either in and out or unable to stay the complete time, I have a great interest in this area and will continue to follow it and be able to assist in protecting our children in this Nation.

I yield back the balance of my time.

Mr. MCCOLLUM. Thank you, Ms. Jackson Lee. You're certainly going to be forgiven if you run out. I also have another hearing going on, but I don't have the privilege of doing what I used to have. [Laughter.]

I would like to welcome our first panel of witnesses this morning, and I fully expect other members of our committee will be joining us. They also have obligations that conflict this morning, but after 10, I think, that frees up a little bit.

Our first witness is my good friend from the Seventh District of New Jersey, Representative Bob Franks.

Bob, welcome.

Mr. Franks is the primary sponsor of the bill under consideration in today's hearing, H.R. 3508, the Children's Privacy Protection and Parental Empowerment Act of 1996, which he recently introduced. He's serving on the Budget and Transportation Infrastructure Committees in the House, and I particularly want to thank Mr. Franks for his work on legislation and for particularly joining us this morning.

Joining you on the panel this morning, our second witness is no stranger to this committee. Marc Klass is the father of 12-year-old murder victim Polly Klass. We've had the privilege of having your testimony on a number of occasions, and we really appreciate the contribution that you've been making to a number of the issues related to crime and children and privacy and lots of other things that are important to all of us.

Upon the discovery of his daughter's body, as I think most of the Nation knows, Mr. Klass gave up a lucrative business as a Hertz franchise owner to concentrate his efforts on stopping crimes against children and ending child abuse. Mr. Klass has emerged as a national leader in these efforts in a proactive approach to educate America's at-risk children, their families, and policymakers like me.

Our third witness is Mariam Bell, executive vice president and chief operating officer of Enough is Enough, a nonprofit, nonpartisan women's organization with a key focus toward protecting children from sexual abuse, violence, and pedophile activity. Ms. Bell has over 13 years of experience in Federal legislation and public and community affairs, serving as Deputy Assistant Secretary for Public Affairs at the Department of Health and Human Services and as White House Associate Director for Public Liaison under President Reagan. Ms. Bell currently serves on the boards of the National Law Center for Children and Families, World Magazine, and the Commonwealth of Virginia's Maternal and Child Health Commission.

Our fourth witness is Marc Rotenberg, the director of the Electronic Privacy Information Center, a public policy research group that focuses on emerging privacy and civil liberty issues here in Washington, DC. In addition to his responsibilities with EPIC, Mr. Rotenberg is also an adjunct professor at Georgetown University's Law Center, where he has taught information and privacy law since 1991. Previously, he served as counsel to the Senate Judiciary Committee specializing in law and technology. Mr. Rotenberg has testified before Congress on many cyberspace issues, including access to information, computer crime, computer security, and privacy. Mr. Rotenberg is a graduate of Harvard College and the Stanford Law School. I almost wanted to say Harvard Law School, but, you see, I know that's not true. You've got quite a dual of universities there and colleges that you're a graduate of.

I want to welcome the entire panel this morning. Out of congressional courtesy, I'm going to ask Mr. Franks to go first, and then I'll go in the order of Mr. Klass, Ms. Bell, and Mr. Rotenberg.

Mr. Franks, welcome. Please give your statement, and as we go through this, I will say all of the statements of the panel in writing will be admitted for the record, without objection, and you may proceed to summarize.

STATEMENT OF HON. BOB FRANKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. FRANKS of New Jersey. Mr. Chairman, thank you very much for convening the hearing this morning. I appreciate the subcommittee's willingness to take a look at this issue before we adjourn.

The information revolution, as you indicated, Mr. Chairman, has opened up exciting opportunities for all Americans. It's already offering our population more choices than ever before. But while instant access to more information can be a positive development in our lives, this technology can also be manipulated by those who seek to prey upon the weak or those willing to make a buck regardless of the consequences. As the information age continues to unfold, I am one who believes that Congress has an obligation to monitor this emerging technology to make sure that reasonable safeguards are in place to protect the most vulnerable among us, our children.

The safety and privacy of our children is already being threatened by one element of this information explosion. Every day in communities across America parents stop by a local fast food restaurant or an ice cream store and sign their kids up for a birthday club. Others dress their children up to have a picture taken by a professional photographer and fill out a card before the picture is actually snapped. Oftentimes, a mother or father is at a supermarket and they fill out a detailed consumer survey in exchange for some discount coupons. What these parents, in my judgment, fail to know is that the personal and sometimes sensitive information that they have innocently provided about their children is readily available for sale, and anyone at any time can purchase it.

Commercial list companies are using that information from a variety of sources to develop an elaborate data base on virtually every child in America. They're gathering children's complete names, their ages, their addresses, their telephone numbers, and often even their personal likes and their dislikes. List brokers also get detailed information from sources such as birth records at local hospitals, other public records, and school directories. And the fact is that the list companies that compile this data sell it freely to whoever wants to purchase it. Anyone with nothing more than a mailing list, a mailing address, can contact a list vendor and order a specific list.

The range of lists that might be ordered are widely varied. It might be the names, addresses, and telephone numbers of all 10-year-old boys in a particular neighborhood who have video game systems. It might be another group of kids living in a neighborhood in some very targeted geographic area, but the breakdown of these lists, as you will hear later in the hearing, is extraordinary. Most parents have no idea that this information about their children is for sale by hundreds of vendors across the country.

Often when parents receive direct mail solicitations or telemarketers call the home, parents have no idea how their kids got on a list, but the danger of this information winding up in the wrong hands is very real and very threatening.

Mr. Chairman, if I can ask if we can run a brief videotape, I would really appreciate it——

Mr. MCCOLLUM. Certainly.

Mr. FRANKS of New Jersey [continuing]. If that videotape is available to us.

Mr. MCCOLLUM. We're very happy to do that.

Mr. FRANKS of New Jersey. Mr. Chairman, as this is warming up, let me simply point out that this videotape relates to a story covered by KCBS–TV in Los Angeles, which I think helps to demonstrate how our children's safety can be threatened by the uncontrolled sale of information about our kids.

Mr. MCCOLLUM. Like everything else, modern technology, whether it's the Internet or whatever, is only as good as the tape or the person who is putting it in. [Laughter.]

Mr. FRANKS of New Jersey. So much for the information age. [Laughter.]

Mr. MCCOLLUM. That's our chief counsel over there who knew that he was not going to get a chance to warm-up practice on this tape.

Please go forward, Bob.

Mr. FRANKS of New Jersey. Mr. Chairman, we need to act now before our children fall prey to some murderer or some molester or someone who would seek to do them harm. With today's technology, the danger of personal information about our children getting into the wrong hands is not only limited to mailing list. Let me be clear on that point.

Recently, this data has been offered in the form of what's called a lookup service over the Internet and over a 1–900 service. A customer could type in a child's name and receive detailed information about that child, including his or her address, the parents' names, the birthday of that child, and anything else about that child which may appear in that data base being offered through this 1–900 lookup service. So you could actually target a particular child in the course of these lookup services and learn everything that one would care to know, if they have some sick mind and want to prey upon innocent people.

There's something, it seems to me, fundamentally wrong when society protects the privacy of information about criminals to a greater extent than it protects the privacy of information about children, who are too often the prey of those criminals. We need, I think, to reverse that syndrome. While there may be very little that we can do to stop a child molester from stalking children when they're playing in the park or walking home from school, my legislation takes some common-sense steps to protect the privacy of children.

Let me say it first, and I hope that it will be repeated often throughout the day, Mr. Chairman. The most important provision of this bill is that it would insure that personal information about a child could no longer be bought and sold without a parent's consent. The legislation would also give parents the right to compel list brokers to release to the parents all the information they have compiled about their child. In addition, under the legislation, the list vendor would have to turn over to the parents the name of anyone to whom they have distributed personal information about their child.

My bill would force vendors, as you indicated, to become more diligent about to whom they sell this information. We would make it a crime under this bill to knowingly sell to someone who we have knowledge or reason to believe seeks to do harm to that particular child.

And, finally, there's a provision in the bill which will stop the practice that was actually engaged in by a data base company of giving names and information about children to a prison under contract, where child molesters were actually entering in data about particular children. This bill will stop that practice cold. No longer would such a heinous practice be permitted.

In this high-tech age when information about children is so readily available through a simple keystroke or a simple phone call, we need to protect our children to a greater extent than we are. Kids have to be viewed as more than little consumers. They have to be viewed as more than miniprofit centers.

Mr. Chairman, you're right; you said these companies do wonderful work, and most of them do, and the information that they want to transmit to parents and children has value. Others, however, would seek to use these lists to do harm to the child. Who better to invest the power of the decision as to whether their children's names get traded back and forth than the parents? Let the parents be empowered to make that decision. That's the overriding message of the bill, and I hope that those who come forward in opposition to this bill, because it would change some of the practices internally within the industry, I hope that we will be able to hear from them why parents should not be empowered to make the decision as to whether or not personal and sensitive information about their own children is being traded in the open market.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Franks of New Jersey follows:]

PREPARED STATEMENT OF HON. BOB FRANKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman, thank you for holding this hearing today on my bill, H.R. 3508. I greatly appreciate the Subcommittee taking the time to look into this important matter before we adjourn.

The information revolution has opened up exciting opportunities for all Americans. It is already offering consumers more choices than ever before. But while instant access to more information can be a positive development in our lives, this technology can also be manipulated by those who want to prey upon the weak or make an easy buck regardless of the consequences.

As the information age continues to unfold, Congress has an obligation to monitor the new technology and make sure that reasonable safeguards are in place to protect the most vulnerable among us—our children.

The safety and privacy of our children is already being threatened by one product of the information explosion.

Every day in communities across America, parents stop by a local fast food restaurant with their kids and sign them up for a Birthday Club. Others dress their children up to have a picture taken by a professional photographer and fill out a form before the picture is snapped. Or maybe they're at the local supermarket when they fill out a consumer survey about their family's buying habits in exchange for a free product or some discount coupons.

What these parents probably don't know is that the personal and sometimes sensitive information they've innocently provided about their children is for sale. And anyone, anytime can purchase it.

Commercial list companies are using that information to develop an elaborate data base on virtually every child in America. They're gathering children's complete

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names, ages, addresses and phone numbers—and often even their personal likes and dislikes.

List brokers also get data from school directories, birth certificates, and other public records.

And the fact is these list vendors sell this information freely to whoever wants to purchase it. Anyone with nothing more than a mailing address can contact a list vendor and order a specific list. It might be the names, addresses and phone numbers of all children living in a neighborhood—or a listing of all ten-year-olds boys in a particular community who have video game systems. And the cost of this information is relatively inexpensive.

Most parents have no idea that information about their children is for sale by hundreds of list vendors.

Often, parents have no idea why their children are solicited by direct mail advertisers or tele-marketers. But the danger of this information winding up in the wrong hands is very real and very frightening.

In May of this year, a news report by KCBS–TV in Los Angeles vividly demonstrated the threat to our children's safety from the uncontrolled sale of information about children. The station ordered a list of the names, addresses and phone numbers of 5,000 Los Angeles children from the nation's largest distributor of lists. It placed the order in the name of Richard Allen Davis, the man recently convicted and sentenced to death for kidnapping 12-year-old Polly Klaas from her Sausilito home and murdering her. After providing nothing more than a fake name, mailing address and a disconnected phone number, the list arrived the next day. The cost—just $277, cash on delivery.

We must act now to protect our children before a real murderer or child molester buys a list of potential victims.

With today's technology, the danger of personal information about children getting into the wrong hands is not only limited to mailing lists. Recently, this data has been offered for sale in a "look-up" service over the Internet and a 1–900 number. A customer could type in a child's name and receive information on that child, including his or her address, parent's names, and birthday.

There's something fundamentally wrong when society takes more care in protecting information about criminals than it does in protecting information about our children from those who would harm them.

While there may be little we can do to stop a child molester from stalking children when they're playing in the park or walking home from school, my legislation takes some common-sense steps to protect the privacy of children.

The most important provision of the Children's Privacy Protection and Parental Empowerment Act would ensure that personal information about a child could no longer be bought and sold without a parent's consent.

The legislation would also give parents the right to compel list brokers to release to them all the information they have compiled about their child. In addition, the list vendor would have to turn over to the parents the name of anyone to whom they have distributed personal information about their child.

My bill would force list vendors to be more diligent about verifying the identity of companies and individuals seeking to buy lists of children. Specifically, it would be a criminal offense for a list vendor to provide personal information about children to anyone it has reason to believe would use that information to harm a child.

Finally, there is a provision in the bill to address an alarming practice that was actually used by one list company. The company had a contract with a Texas prison for data entry services. Just think of it, prisoners—including child molesters and pedophiles—were being handed personal information about children to enter into a computer data base. Although the company no longer uses prison labor, my bill would prohibit this dangerous practice from ever being used again. Prisoners and convicted sex offenders would never again have access to personal information about children.

In today's high-tech information age—when access to information on our personal lives is just a keystroke or phone call away—our children need this special protection.

The Children's Privacy Protection and Parental Empowerment Act has attracted 46 cosponsors and the support of a broad cross-section of groups including the National PTA, the Christian Coalition, the Electronic Privacy Information Center, the National Coalition for Children and Families, Enough is Enough!, the Family Research Council, ChildHelp USA, the Center for Media Education, the Klaas Foundation for Children, the Consumer Federation of America, the Privacy Times, and New Jersey Association of Police Chiefs.

I know that the direct marketing industry has a number of concerns, as do some organizations representing colleges and universities. I am open to working with

members of the Subcommittee, as well as interested organizations with concerns, to address legitimate concerns as long as they do not frustrate the intent of this legislation—to protect children.

I have a number of changes I would like to offer as an amendment to this legislation. In order to ensure that this legislation does not hinder efforts to locate missing children, I propose exempting from the bill law enforcement, government agencies, and non-profit organizations exclusively engaged in the search for missing children. To answer concerns about limiting educational opportunities and financial aid information from reaching students, I would be open to discussing an exemption for accredited colleges and universities.

The one standard on which I can not compromise is parental consent. This is the cornerstone of this legislation, and I believe it is of utmost importance that parents play the defining role in the dissemination of information about their own children.

In conclusion, I would like to point to a poll conducted for Direct Magazine, the trade journal of the direct marketing industry. In their survey, 74% of consumers believed selling information about children through mailing lists is wrong or should be illegal. In the emerging information age, with more information available and with increasingly sophisticated criminals, my legislation provides an essential level of protection for our children.

Thank you Mr. Chairman.

Mr. MCCOLLUM. Thank you very much, Congressman Franks.

I think your tape is ready for playing, and before we go on to Mr. Klass, I'd like to show that tape.

[Videotape shown.]

Mr. MCCOLLUM. I think that tape pretty well speaks for what you wanted it to and is a pretty good introduction to you, Marc Klass, since you were shown prominently there. So, please, we welcome you again, as I said earlier. You've been before our subcommittee on numerous occasions, and we are grateful for all the public service you're doing in this regard. Please proceed.

STATEMENT OF MARC KLASS, CHAIRMAN, KLASS FOUNDATION AND KIDS OFF LISTS

Mr. KLASS. Thank you, Mr. McCollum. I'd like to extend my appreciation to Representative Franks for his commitment to and his hard work in behalf of the Children's Privacy Protection and Parental Empowerment Act, and I'd like to thank you for calling this hearing to focus on the dangers of direct marketing companies that collect and sell personal information on children without parental consent.

As the father of a child brutally murdered by a violent recidivist offender, I do know the importance of protecting our most valuable and vulnerable resource, our children. The irony of this whole issue is that it's perfectly legal to sell and trade in private information on children, even in communities where we protect the privacy of convicted predators.

When Ms. Phillips came to me and told that she was going to call this company and ask for this information, I told her not even to bother, that there's not a company in America that would be so irresponsible as to sell information on children to Richard Allen Davis. I guess she knew better than I did, didn't she?

The private data base industry serves a purposeful function in society and it does serve the needs of a productive economy. However, we must carefully control access to children's private information. The unsafe practices of unapologetic segments of the data base industry endanger the safety of America's children and cannot be trusted. The indiscriminate sale of data on kids betrays stated

policy and proves a disregard for the safety and a lack of accountability.

In 1991, industry representative James McQuaid testified before the House Subcommittee on Postal Services that information security is a key priority for us and other players in the industry. Yet, Mr. McQuaid's former company provided a 900 lookup service that sold children's names and addresses to anyone for $3 per minute. Imagine that: legally selling individual pieces of information on children for $3 per minute. I have no idea what purpose this serves other than profit.

The selling of private information on 5,500 kids to Richard Davis, my daughter's killer, in May 1996 also refutes industry claims that they only sell lists to blue chip companies. Quite frankly, this example chills me to the bone, and after watching this video for probably the 10th time, I really am shaken.

The responsible company claims that policy and safeguards were violated, but they will not tell us what those policies or safeguards are. To this day, we don't know.

The use of imprisoned violent offenders, including murders, rapists, and child molesters, to process consumer surveys into list data bases is absolutely obscene. A convicted rapist due to be released next year used information gathered on a consumer survey, this survey that says, "No sweepstakes, no promises, no gimmicks, just free coupons and samples." It doesn't say anything about prisoners doing data base information. It doesn't say anything about putting you on any kind of a list that can be sold, you or your children on any kind of a list that can be sold to anybody for $3 a minute or by the pound or by the ounce on large lists.

But a convicted rapist did use consumer survey information to stalk Beverly Dennis, an Ohio grandmother, through the mail. Now if this can happen to a grandmother, it can certainly just as easily happen to a child.

I do not think that the DMA rules prohibit a 900 lookup service on children. I do not think that DMA rules prohibit prisoners processing data. If they do, they never announce violations to make it clear to everyone that these are violations. If self-regulation worked, don't you think the industry would have loudly condemned these practices?

Members of the committee, we are outsiders. We know nothing about the inside workings of the dark side of the data base industry. Numerous attempts to meet with and learn about these practices, and the reasoning behind these policies, have been met with silence and evasion.

I, before the trial of my daughter's killer, I made an awful lot of attempts to meet with people from the Metromail Co. to find out what's going on, and it just wouldn't work because they refused to talk to me about these issues.

I make no apologies for our failure to offer up child victims because that's what they're going to say: there's no victims; so what is the problem? However, we are dealing with a sophisticated, highly recidivist element of the criminal culture when we're dealing with these pedophiles. Who knows how many unreported and unsolved cases of abuse there are? If there victims, neither the industry nor the DMA is talking about it. I think that if we match cus-

tomer lists for the 900 lookup service against sex offender registries, we might shed new light on this issue.

Now Rebecca Shaeffer was stalked from her driver's license record and murdered. Before that, there was no evidence that driver records were being used to harm anyone. If she had not been famous, how would we have ever known that a driver's list was used? We know that a rapist has terrorized Beverly Dennis through the mail because he got her personal survey information. He will be released next year. But before that, there was no evidence of a problem. If she had not come forward, how would we have known a consumer survey was used? Will we continue to be reactive and take action only in the aftermath of tragedy or will we be proactive and put up a streetlight here before we start piling up the bodies?

These incidents and a little common sense show that the handwriting is on the wall for data base information to be used to harm a child, even if we do not yet have hard evidence—and by evidence, I assume that these people are going to be talking of a coffin or a molested child. Now everybody wants to protect the children because family values are very important. Data about children should be handled more carefully than that of adults. Do parents not have the right to control private information on their own children? Should parents not have the opportunity to opt onto lists instead opting off of lists that they are not even aware exist? Parents deserve the right to know who is providing information on their children to these data base companies, and we must deny prisoners access to private information on all Americans, let alone the children.

A recent survey by Talmey-Drake Research and Strategy of Colorado Springs for the trade journal Direct magazine found that 74 percent of consumers said that it was wrong or should be illegal for direct marketing companies to use the names and ages of children on their mailing lists. Eighty-three percent of respondents said there should be a law requiring an opt-in procedure for names to be included on mailing lists. This is the DMA's own survey.

These hearings offer an important opportunity to find out the truth about unsafe practices. The truth is that list compilers do not know who they are selling to; they do not know who they have sold to, and they will not tell parents anyway, even if they did know, because they like to operate in secrecy. The industry must close the door it has opened for criminals who prey on children.

Please, ladies and gentlemen, help us find the truth, but please be careful because I personally believe that they will say anything and everything to throw you off-track. Thank you very much.

[The prepared statement of Mr. Klass follows:]

PREPARED STATEMENT OF MARC KLASS, CHAIRMAN, KLASS FOUNDATION AND KIDS OFF LISTS

Did you know that it is perfectly legal to acquire private information on children, even in communities where we protect the privacy of convicted predators?

The private database industry serves a purposeful function in society and serves the needs of a productive economy and a needy public. However, when it comes to distributing private information on children, we must be very careful who can access this information. The unsafe practices of contain rogue segments of the database industry endanger the safety of America's children.

Greedy, un-apologetic elements of the unregulated database industry concerned only with profit have shown they can't be trusted. Their indiscriminate sale of data

on kids betrays stated policy and proves a disregard for safety and a lack of accountability. The use of violent offenders including convicted murderers, rapists and child molesters to process consumer surveys into list databases is obscene. A (900) call-up service that sells a child's name and address to anyone for $3.00 per minute is indefensible. The selling of private information on 5,500 children to Richard A. Davis my daughter's killer refutes industry claims that they only sell lists to blue chip companies.

Sir, we are outsiders. We know nothing about the inside workings of the dark side of the database industry. Numerous attempts to meet with and learn about the practices and reasoning behind these avaricious policies has been met with silence and evasion. On many occasions I have unsuccessfully sought answers to the following questions:

1. What is the purpose of providing private information on children through a (900) call-up service?
2. Do parents have the right to regulate their children's private information?
3. Why is this information useful to people and why is it kept secret?
4. Will you identify sources from which information on children is obtained?
5. Where is information on children processed?
6. How many children's records were provided to prisoners, and have you taken any corrective action to notify the parents?

A recent survey by Talmey-Drake Research and Strategy of Colorado Springs for trade journal Direct Magazine found that 74% of consumers said that it was wrong, or should be illegal, for direct marketing companies to use the names and ages of children on their mailing lists. 83% of respondents said there should be a law requiring an opt-in procedure for names to be included on mailing lists.

I make no apologies for our failure to offer up victims. What I do know is that pedophiles use lists. They are culled from Boy Scouts, altar boys, little league teams and anywhere children are found. The stereotypical dirty old man will pick up his victims on school yard playgrounds. However, there are documented cases of pedophiles luring children off of their computer screens, across state lines and into their bedrooms. We are dealing with a sophisticated, highly recidivist element of the criminal culture. Who knows how many unreported and unsolved cases of abuse there are.

If there are victims, neither the industry nor the DMA is talking about it. Perhaps matching customer lists for the (900) call-up service against sex offender registries will shed new light on this issue. Will we continue to be re-active and take action only in the aftermath of tragedy? Or, will we be pro-active and put up a streetlight before the bodies start piling up. Remember Polly Klass. Remember Jessica Dubroff.

There is much talk about family values these days. Everybody wants to protect the children. Do you not think that data about children should be handled more carefully than that of adults? Don't parent's have the right to regulate privacy information on their own children? Shouldn't they have the opportunity to opt onto lists instead of opting off of lists that they are not even aware exist? And, shouldn't prisoners be denied access to private information on all American's let alone the children?

These hearings offer an important opportunity to find out the truth about unsafe practices. We have discovered reprehensible practices and we want your help getting answers. The industry must dose the door it has opened for criminals who prey on children. We don't have all the answers but if congress is serious about doing something about this they should ask hard questions and put the lid on this putrid garbage can. Be careful. They will say anything to throw you off track.

Mr. MCCOLLUM. Thank you very much, Mr. Klass.

Ms. Bell, you may give us your testimony. Welcome.

STATEMENT OF MARIAM BELL, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, ENOUGH IS ENOUGH

Ms. BELL. I want to thank the chairman and the members of the committee for this opportunity to publicly support the passage of the Children's Privacy Protection and Parental Empowerment Act and encourage each of you to take this simple, yet absolutely essential, legislation very seriously.

I also want to commend Representative Bob Franks, who had the foresight to see the train coming directly at our Nation's children and to take the necessary steps to avert pending disaster. We con-

gratulate you in your efforts to lock the door before the horse is stolen and prevent the needless victimization of who knows how many children. Thank you, Mr. Franks.

As chief operating officer and executive vice president of Enough is Enough, a nonpartisan, nonprofit women's organization with a key focus toward protecting children from sexual abuse, violence, illegal pornography, and pedophile activity, I am constantly aware of the increasingly tragic abuses our country's children are suffering. As despicable as it may be, the reality is that there are many adult perpetrators living among decent citizens of our communities who prey every day, every hour, upon our children, and the suffering caused by the abusers is beyond comprehension. At the same time, we are experiencing technological advancements in the marketplace that seem boundless and economically beneficial to our country, and we have reason to be excited about our country's future.

It is very sad that we have entered into a time in our country when legislation like this is even necessary. Wouldn't it be wonderful if we could use each new technological tool to its fullest and know that those who are operating the tools will do so responsibly? It is a terrible shame when we cannot trust the consciences of American business to do what is necessary within their own industries to maintain the most minimal standards of protection from harm. But as the reporter in California who uncovered the practices of the Nation's largest data base marketing firm has proven, the potential for invasion and harm is unbridled. Even if the incidents with Metromail is an aberration and atypical of the policies of the list broker industry, the reality is it happened, and there's nothing to say it can't and won't happen again and again. And what would the consequences be?

Think about it. A Girl Scout troop goes to Chuck E. Cheese or Discovery Zone. Each girl stands at the counter and fills out a form which promises them free ice cream or pizza on their birthdays if they fill out the simple, colorful card with their names, addresses, Girl Scout troop number, and birth date. That's a lot of private information the children are innocently giving away, completely unaware of the risk they are taking when that information gets into a list broker's data base. All they wanted was free ice cream.

According to the TV reporter, anybody with a telephone and $200-plus can round up a list of Girl Scouts between the ages of 6 and 8 in a certain ZIP Code and use that information for whatever purposes they want. Pedophiles can be very, very clever people. Most of us in this room are aware of the lengths they have gone to abuse their child victims, but apparently they don't need to be clever anymore. A list broker can do the research for them and can provide them with just enough information for them to set their sights on the preferred age group in their community. Since a typical serial child molester abuses over 360 children in his lifetime, he will appreciate the help.

The North American Man-Boy Love Association's monthly bulletins instruct pedophiles how to seduce children, where to meet kids, how to avoid getting caught, and how to assist children in deceiving their parents. It is the MO of a pedophile to be innovative in targeting children for victimization. If a pedophile is hunting for

children to victimize, he will use whatever resources are available to him. He will befriend the child, and his or her parents, if necessary, form a relationship of trust, and then, ultimately, abuse that trust.

How best to begin the process if not with information? The more you know about a person, the more you are able to find ways of relating to them. Some surveys in magazines ask all about hobbies, interests, friends, and tastes. Can you imagine what someone who's trying to finesse his way into a child's life could do with information like that? As an adult, you might react very differently to someone who knew too much about you, but a child is not so cynical as we adults have become.

The Children's Privacy Protection and Parental Empowerment Act will effectively close off the marketing lists as a resource to pedophiles. It will also prevent other businesses from exploiting the personal information that children so innocently give to one business in order to play a game or join a birthday club. Children trust us, and trust legitimate businesses to take care with them, let them have fun, not use them as marketing tools or exploit them as marketing sources. There are legitimate concerns for Congress and parents both for the pedophile abuses, the commercial abuses of a child's personal data. This bill will insure some measure of safety and control over both uses of such personal information. Without legislation, it is simply a matter of time before we find out how much it was needed.

Of course, we are not saying that the list broker is in the business of providing pedophiles with victims. We assume that most would be appalled to find out that many of their customers would use their product for that purpose. At the same time, however, many members of the Direct Marketing Association are not happy with the idea of tampering with the profitable child market. Naturally, they balk at any regulation of their industry. But many parents believe that the freedoms enjoyed by the industry directly conflict with many of the freedoms enjoyed by their family. Who are these people that take personal information about our families and about our children and market it to any stranger who wants it? Who has control over personal information about our families, and why are we being forced to trade our privacy and the sanctity of our homes for a free ice cream?

When parents tell a child to go ahead and fill out a card at a store or a fast food restaurant, they often absolutely have no idea of what is about to happen to the information on that card. By filling it out, they are not knowingly giving their consent to the assault of their child, and thereby their family's privacy. They cannot know what goes on after that card is filled out and returned, and they certainly are unaware of the risk that their child's personal information could very possibly end up in the hands of a pedophile. And why don't they? Because list brokers are now in the very powerful position of taking a very effective marketing tool and abusing it to the point where this legislation has become necessary.

In the absence of legislation, what do parents do? Add yet another thing to warn our children about? We already have to be diligent about educating our children about the dangers of talking to adults. It is up to parents to make sure that their children are mis-

trustful of computer communications. We can't just let our children go to school without worrying about how safe it is for them to leave their home, walk to school, learn something, and come home. And now we have to worry about filling out a form to get free ice cream. It is not enough to simply ask, "Whose responsibility is this?" Is it clearly the responsibility of the people who sell the information to make sure that what they are selling is by the freely-given permission of the parents of those children. The parents should be the ones to decide who receives personal information about their children and their families, not list brokers or marketers or computer programs.

This legislation is not unlike how American businesses have always understood the rules as it applies to children. We do not allow children to enter into binding contracts without parental consent because children are not capable of giving the kind of informed consent involved with adult legal obligations, and because they are entitled to extra protection against commercial exploitation and any other kind of exploitation. Just like in contract law, this legislation only limits businesses in the context that we in this country do not expose our children to liability with adults. Therefore, if you gain information about a child within a certain context—that is, a game or a contest or a birthday ice cream card—it is absolutely appropriate to limit the use of that information to the purposes of the child's intention and not to allow it to take on a fully adult business purpose. As an adult, therefore, one should not be entitled to take that information beyond the scope of the child understood what he or she was doing when the child initially gave the information.

We are supporting passage of this legislation because we know it will prevent many children from being abused. It is important that we get our priorities straight and remember why it is that we as a nation consider children to be our greatest resource, not direct marketing. Thank you very much.

[The prepared statement of Ms. Bell follows:]

PREPARED STATEMENT OF MARIAM BELL, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, ENOUGH IS ENOUGH

I want to thank the members of the Committee for this opportunity to publicly support the passage of the *Children's Privacy Protection and Parental Empowerment Act*, and encourage each one of you to take this simple, yet absolutely essential legislation very seriously. I also want to commend Representative Bob Franks, who had the foresight to see the train coming directly at our nation's children and take the necessary steps to avert pending disaster. We congratulate you on your efforts to lock the door *before* the horse is stolen, and prevent the needless victimization of who knows how many children.

As Chief Operating Officer and Executive Vice President of "Enough is Enough!", a non-profit, non-partisan women's organization with a key focus towards protecting children from sexual abuse, violence, illegal pornography, and pedophile activity, I am constantly aware of the increasingly tragic abuses our country's children are suffering. As despicable as it may be, the reality is that there are many adult perpetrators living among the decent citizens of our communities who prey everyday, every hour, upon our children. And the suffering caused by the abusers is beyond comprehension. At the same time, we are experiencing technological advancements in the marketplace that seem boundless and economically beneficial to our country. We have reason to be excited about our country's future.

It is very sad that we have entered into a time in our country when legislation like this is even necessary. Wouldn't it be wonderful if we could use each new technological tool to its fullest, and know that those who are operating the tools will do so responsibly? It is a terrible shame when we cannot trust the consciences of American businesses to do what is necessary within their own industries to maintain the most minimal standards of protection from harm. But as the reporter in California who uncovered the practices of the nation's largest database marketing firm has proven, the potential for invasion and harm is unbridled. Even if the incidents with Metromail is an aberration and atypical of the policies of the list broker industry, the reality is, it happened. And there is nothing to say it can't and won't happen again and again. And what would the consequences be?

Think about it. A girl scout troop goes to Chuckie Cheese or Discovery Zone. Each girl stands at the counter and fills out a form, which promises them free ice cream or pizza on their birthdays, if they fill out the simple, colorful card, with their names, addresses, girl scout troop number, and birthdates. That's a lot of private information the children are innocently giving away, completely unaware of the risk they are taking when that information gets into a list broker's database. All they wanted was free ice cream. According to the TV reporter, anybody with a telephone and $300+ dollars, can round up a list of girl scouts between the ages of 6 & 8 in a certain zip code, and use that information for whatever purposes they want.

Pedophiles can be very clever people. Most of us in this room are aware of the lengths that they have gone to abuse their child victims. But apparently, they don't need to be clever anymore. A list broker can do the research for them, and can provide them with just enough information for them to set their sites on the preferred age group in their community. Since a typical serial child molester abuses over 360 children in his lifetime, he will appreciate the help. North American Man-Boy Love Association's monthly bulletins instruct pedophiles how to seduce children, where to meet kids, how to avoid getting caught, and how to assist children in deceiving their parents. It is the MO of a pedophile to be innovative in targeting children for victimization. If a pedophile is hunting for children to victimize, he will use whatever resources are available to him. He will befriend the child, and his or her parents, if necessary, form a relationship of trust and then, ultimately, abuse that trust. How best to begin the process if not with information. The more you know about a person, the more you are able to find ways of relating to them. Some surveys in magazines ask all about hobbies, interests, friends, and tastes. Can you imagine what someone who is trying to finesse his way into a child's life could do with information like that? As an adult, you might react very differently to someone who knew too much about you, but a child is not so cynical as we adults have become. The *Children's Privacy Protection and Parental Empowerment Act* will effectively close off the marketing lists as a resource to pedophiles.

It will also prevent other business from exploiting the personal information that children so innocently give to one business in order to play a game or join a birthday club. Children trust

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us and trust legitimate businesses to take care with them, let them have fun, not use them as marketing tools or exploit them as marketing sources. There are legitimate concerns for Congress and parents for both the pedophile abuses and commercial abuses of a child's personal data. This bill will insure some measure of safety and control over both uses of such personal information. Without the legislation, it is simply a matter of time before we find out how much it was needed.

Of course, we are not saying that a list broker is in the business of providing pedophiles with victims. We assume that most would be appalled to find out that any of their customers would use their product for that purpose. At the same time, however, many members of the Direct Marketing Association are not happy with the idea of tampering with the profitable child market. Naturally, they balk at any regulation of their industry. But many parents believe that the freedoms enjoyed by the industry directly conflict with many of the freedoms enjoyed by their family. Who are these people that take personal information about our families and our children, and market it to any stranger who wants it? Who has control over personal information about our families, and why are we being forced to trade our privacy and the sanctity of our homes for a free ice cream?

When parents tell a child to go ahead and fill out a card at a store or a fast food restaurant, they often have absolutely no idea of what is about to happen to the information on that card. By filling it out, they are not knowingly giving their consent to the assault on their child's, and thereby, their family's, privacy. They cannot know what goes on after that card is filled out and returned. And they certainly are unaware of the risk that their child's personal information could very possibly end up in the hands of a pedophile. And why don't they? Because list brokers are now in the very powerful position of taking a very effective marketing tool and abusing it to the point where this legislation has become necessary.

In the absence of legislation, what do parents do? Add yet another thing to warn our children about. We already have to be diligent about educating our children about the dangers of talking to adults. It is up to parents to make sure that their children are mistrustful of computer communications. We can't just let our children go to school without worrying about how safe it

is for them to leave their home, walk to school, learn something, and come home. And now we have to worry about filling out a form to get free ice cream. It is not enough to simply ask "whose responsibility is this?" It is clearly the responsibility of the people who sell the information to make sure that what they are selling is by the freely given permission of the parents of those children. The parents should be the ones to decide who receives personal information about their children and their families, not list brokers, or marketers, or computer programs.

This legislation is not unlike how American businesses have always understood the rules as it applies to children. We do not allow children to enter into binding contracts without parental consent because children are not capable of giving the kind of informed consent involved with adult, legal obligations, and because they are entitled to extra protection against commercial exploitation and any other kind of exploitation. Just like in contract law, this legislation only limits businesses in the context that we, in this country, do not expose our children to liability with adults. Therefore, if you gain information about a child within a certain context, that is, a game, or a contest, or a birthday ice cream card, it is absolutely appropriate to limit the use of that information to the purposes of the child's attention and not allow it to take on a fully adult business purpose. As an adult, therefore, one should not be excited to take that information beyond the scope of the child understood what he or she was doing when the child initially gave the information.

We are supporting passage of this legislation because we know it will prevent many children from being abused. It is important that we get our priorities straight and remember why it is that we as a nation consider children to be our greatest resource, not direct marketing. Thank you very much.

Mr. MCCOLLUM. Thank you very much, Ms. Bell.
Mr. Rotenberg.

STATEMENT OF MARC ROTENBERG, DIRECTOR, ELECTRONIC PRIVACY INFORMATION CENTER

Mr. ROTENBERG. Thank you very much, Mr. Chairman and members of the committee. I appreciate the opportunity to appear today in support of the Children's Privacy Protection and Parental Empowerment Act. I believe that the act is a sensible, well-considered measure that will establish fair information practices for personal information about children and curb recent abuses in the direct marketing industry.

As you know, the collection of data about children is growing at a phenomenal rate. Government agencies, private organizations, universities, associations, and businesses all gather information on kids of all ages. Records on our children are collected literally at the time of birth, segmented, compiled, and in some cases resold to strangers, anyone who wishes to buy them.

With a few exceptions, there are no clear legal standards that regulate any of these activities. It is also very difficult, as Marc Klass suggested earlier, to determine how detailed these lists have become and what unreported abuses or misuses of personal information have already occurred.

There is a growing record that makes clear the current practices which ignore standard privacy procedures following in other industries and other market sectors pose a substantial threat to the privacy and safety of young people. For example, automated lookup services have made it possible for strangers to locate and stalk young children. CNN reported late last year that "There is no law on the books that prevents a stranger from calling a 900 number and getting information about your children."

Prison labor is used to compile personal information. Some convicted felons have used this data to harass and threaten single women. Of this incident, the Wall Street Journal said, "The episode underscores the danger of giving prison inmates access to highly personal information about consumers." In fact, industry practices have become so abysmal that a reporter posing as the murderer of Polly Klass was able to obtain the ages and addresses of children living in the Pasadena area.

At the center of the problem is the collection of personally-identifiable information, not demographic information, not aggregate data. The National Center for Missing & Exploited Children has made clear how important it is to protect the privacy of this information. In lieu of supporting legislation to restrict the content of information that flows across the Internet, the National Center urged parents to tell their children not to give out personal information to strangers online. It is hard to imagine that the current situation will not become significantly worse unless some standards are soon established.

Now the industry has said that it is not necessary to pass laws to protect privacy. They believe that there are self-policing practices, and, in particular, the opt-out mechanism is sufficient. I'd like to quote for you just a couple of excerpts from a book that was recently published by two law school professors here in the United

States, Paul Schwartz at the University of—I'm sorry, Fordham Law—no, Paul Schwartz is at the University of Arkansas, and Joel Reidenberg of Fordham Law School. They conducted an extensive survey of direct marketing practices in the United States, the most extensive survey that has ever been conducted. It was published part of an academic book called Data Privacy Law, and this is what they concluded:

"[O]nly 53 percent of DMA members are reported to the service to screen their mailings . . . . most Americans are unaware of the name removal options. This ignorance reflects either ineffectiveness or noncompliance even by . . . Direct Marketing Association members purporting to use the service."

They also found that, "Company codes of practice do not elaborate any remedy for individuals in the event that a company policy has been violated." And I think that was particularly clear in the recent incidents involving Metromail. "Unlike the financial services or telecommunications [industries], strong internal sanctions do not appear to be in place against employees who violate company [privacy] codes."

Now the implications of the Reidenberg-Schwartz study for this committee are very important: industry has not succeeded and self-regulation has not succeeded in establishing adequate privacy safeguards. The opt-out proposal specifically does nothing to stop the collection of data about children and the subsequent profiling, but it is not just legal scholars who have reached this conclusion. USA Today put the point very well in an editorial last year. The newspaper wrote, "While voluntary compliance might be preferable in an ideal world, it is not likely to work in the real world. The result is that the absence of government prodding has resulted in too many companies doing too little to protect . . . privacy rights."

Even the Economist, which is a British magazine not particularly well-known for its support of government programs, in the area of privacy protection has recognized a need to legislate. As they said earlier this year, "Enforcing the consent rule will be difficult. But it is worth a try. It would give information gatherers a push in the right direction. Companies would collect and resell information more discriminately. And people who cherish their digital privacy would have the means to protect it—which is as it should be."

Finally, I'd like to point to two public opinion polls, one done by Time/CNN in 1991 and the other by Yankelovich this past year which found that 9 out of 10 Americans believe that personal information should not be sold by list brokers without explicit consent.

Now the other important point that I'd like to make this morning concerns the actual structure of the legislation. Some questions have been asked, for example: Is it appropriate to give parents the ability to make these types of decisions about children? Is there any precedent for setting aside data about children and establishing special privacy safeguards? And the answer to these questions is that there is an extremely good precedent, and that is a law passed in 1974, the Family Educational Right to Privacy Act, sometimes called the Buckley amendment, which protects the privacy of educational records for students across the country. What I'm going to do is just read a couple excerpts from this somewhat detailed law to give you a feel for how that bill, which was passed more

than two decades ago and remains in force and place today, even with all the changes in technology, was written.

It says, for example: no funds shall be made available under any applicable program to any educational institution unless the parents of a student are provided an opportunity for a hearing to challenge the content of a student's records. No funds shall be made available to any institution which effectively prevents the parents of students the right to inspect and review the educational records of their students, and no funds shall be made available to any educational institution which has a policy or practice of releasing personal information without the written consent of parents.

Now, of course, the Buckley amendment acknowledges several exceptions to these general principles, and the key terms are tailored to deal with specific problems relating to educational records. But certain points about this well-established precedent are clear. One, Congress has already recognized that there is a need to establish privacy rights for personal information about young people. Two, those rights include both limitations on improper disclosure and the right of parents to inspect information. Three, it is appropriate, it's necessary, to give parents the right to act on behalf of their children. And, four, strong penalties are necessary to insure that these standards are upheld. I think that 1974 statute is a very important precedent for legislating this area and has very solid foundation.

Now there are some specific questions that have been raised about first amendment concerns, age identification requirements, and so forth. I discuss these in my written testimony, and I hope you will consider that as part of the hearing record.

I will say that EPIC, along with some other organizations, is concerned about a particular provision which we think may raise some first amendment issues, and we would welcome consideration by other civil liberties groups of that point. But, by and large, this is a very well-crafted bill that I think will serve its purpose well.

I would like to say, finally, on this critical point, that the industry has argued that it is not necessary to pass the bill at this time because, as Marc suggested earlier, there has been no clear tie between marketing practices and specific harm to a child. Now they have said this since the Metromail incident and since the incident involving the processing of personal data by prison labor. And I have to ask the question whether the industry is really prepared to require a dead child before it will consider passage of this legislation, and I don't make this point lightly. Privacy legislation to protect the disclosure of motor vehicle records came about only after the tragic murder of Rebecca Shaeffer, and it would be more than a tragedy if it took a similar incident before this measure was passed.

I appreciate the opportunity to testify. I would be pleased to answer your questions.

[The prepared statement of Mr. Rotenberg follows:]

PREPARED STATEMENT OF MARC ROTENBERG, DIRECTOR, ELECTRONIC PRIVACY INFORMATION CENTER

My name is Marc Rotenberg. I am the director of the Electronic Privacy Information Center (EPIC), a public policy research organization in Washington, DC, that focuses on emerging privacy and civil liberties issues. I am also on the faculty at Georgetown University Law Center where I have taught a course on the Law of Information Privacy since 1991. I appreciate the opportunity to appear before the Subcommittee this morning in support of the Children's Privacy Protection and Parental Empowerment Act.

I believe that the Act is a sensible, well considered measure that will establish fair information practices for personal information about kids and curb recent abuses in the direct marketing industry. There are unique problems in the collection and disclosure of data about children that argues in favor of strong privacy protection.

I will makes three points this morning in support of the legislation. The first is that there is already a sufficient record of problems in the marketing industry to warrant Congressional action. While some have said that Congress should wait until the harms are more clearly established, I believe that this is a dangerous and unwise strategy. By acting now, the Congress and the industry can establish sensible codes and clear standards for privacy protection. This has happened in many sectors where privacy is concerned and there is no reason why it could not happen where the information at issue concerns children.

The second is that industry self-regulation, whatever its merits is simply not well suited to privacy protection where kids are involved. Young people cannot assess risks as adults can, cannot exercise complicated 'opt-out' procedures, and should not be expected to monitor compliance. In the most extreme case, where birth records are sold by hospitals, it is of course impossible to expect babies to protect their privacy interests. It is clearly appropriate in such a situation to establish a standard in law to protect the interests of children.

The third point is that it is entirely consistent with the development of privacy protection legislation enact a law that focuses on children's information. In fact, the Family Education Records and Privacy Act of 1974 followed a very similar approach in establishing federal privacy safeguards for personal information on kids held by any institution which receives federal funds for education. The law has stood the test of time. The Childrens Privacy Act would as well.

Finally, I have a few suggestions for how the bill might be changed to address some of the concerns that have been raised specifically about First Amendment issues, the age identification requirement, possible exemptions, and penalties. With a few small changes, I believe it will be possible to satisfy most of the concerns that have been raised.

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GROWING THREAT TO CHILDREN

The collection of data about children is growing at a phenomenal rate. Government agencies, private organizations, universities, associations, businesses, and club all gather information on kids of all ages. Records on our children are collected literally at the time of birth, segmented, compiled, and in some cases resold to anyone who wishes to buy them.

With a few exceptions, there are no clear legal standards that regulate any of these activities. It is also very difficult to determine how detailed these lists have become and what unreported abuses and misuses of personal information have already occurred. But there is a growing record which makes clear that current practices, which ignore standard privacy procedures followed in other industries and other market sectors, pose a substantial threat to the privacy and safety of young people.

- Automated look-up services have made it possible for strangers to locate and stalk children. CNN reported late last year that, "there is no law on the books that prevents a stranger from calling a 900-number and getting information about your children." (December 14, 1995.)

- Prison labor is used to compile personal information. Some convicted felons have used this data to harass and threaten single women. Of this incident, the Wall Street Journal said, "The 1994 episode underscores the danger of giving prison inmates access to highly personal information about consumers." (May 6, 1996.)

- Industry practices are so abysmal that a reporter posing as the murderer of Polly Klaas was able to obtain the ages and addresses of children living in the Pasadena area.

More evidence about the need to act in comes from an excellent report by the Center for Media Education that documents new problems on the Internet with the commercialization of personal information. CME found that marketing firms are establishing Internet sites to surreptitiously collect personal data on kids. Unlike the old coupon on the cereal box, web operators are able to gather information on users without the person's knowledge or consent. Where there is some notice of the collection activity, there is oftentimes an inducement, such as a contest or game, to encourage children to give up their name, age and address.

The Center recommended that web sites should fully disclose their privacy polices, sites should get parental consent o collect personally identifiable information about children, and that information collected should be protected from misuse. Federal Trade Commissioner Christine Varney has acknowledged that this is a serious concern and suggested that the FTC may take action in this area.

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Not only have companies moved aggressively to collect information about children, literally from the time of birth, but new technologies also make it possible to collect detailed data about a particular child's personal preferences, what he enjoys, or what she fears, in more detail than ever before. Technologies for narrowcasting, such as information provided over the world wide web, will shortly allow advertises to target messages to specific children in real-time.

At the center of the problem is the collection of personal identifiable information --no demographic information, not aggregate data. The National Center for Missing and Exploited Children has made clear how important it is to protect the privacy of this information. In lieu of supporting legislation to restrict the content of information that flows across the World Wide Web, the group urged parents to tell their kids not to give out personal information to strangers on-line.

It is hard to imagine that the current situation will not become significantly worse unless some legal standards are soon established.

INDUSTRY PRACTICES SIMPLY DO NOT WORK

The industry has said that it is not necessary to pass laws to protect privacy. The Direct Marketing Association believes that its self-policing practices have adequately protected consumer and children's privacy. They say that the opt-out procedure, which requires individuals to send a letter to the Mail Preference Service and ask to be removed from mailing lists and then to monitor compliance, is sufficient to protect personal privacy.

An extensive review of privacy protection in the United States recently published in Data Privacy Law (Michie 1996) by Professor Paul Schwartz of the University of Arkansas School of Law and Professor Joel Reidenberg of the Fordham Law School make clear the problems with current practices in the direct marketing industry. Of the opt-out provision, Schwartz and Reidenberg found:

> [O]nly 53 percent of DMA members are reported to the service to screen their mailings. . . . In any case, most Americans are unaware of the name removal options. This ignorance reflects either ineffectiveness or non-compliance even by those DM A members purporting to use the service. (p. 333)

Reidenberg and Schwartz also found:

> Company codes of practice do not elaborate any remedy for individuals in the event that a company policy has been violated. Unlike the financial services or telecommunications context, strong internal sanction do not appear to be in place against employees who violate company codes. (p. 338)

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The authors pointed out that the use of the mail preference service misses a critical aspect of privacy protection. While it may reduce some junk mail that consumers receive, it does nothing to prevent the extensive profiling that companies pursue when data is gathered. Reidenberg and Schwartz concluded that the industry's commitment to opt-out is "ambivalent. While the DMA guidelines call for marketers to offer opt-out, the industry objects to proposals for mandatory opt-out requirement."

The implications of the Reidenberg/Schwartz study for this Committee are critical. Industry self-regulation has not succeeded in establishing adequate privacy safeguards and the opt-out proposal specifically does nothing to stop the collection of data about children and the subsequent profiling.

But it is not just legal scholars that have reached this conclusion. USA Today put the point well in an editorial last year. The newspaper wrote:

> While voluntary compliance might be preferable in an ideal world, it is not likely to work in the real world. The result is that the absence of government prodding has resulted in too many companies doing too little to protect consumers privacy rights." October 25, 1995.

Even The Economist, a British magazine that virtually always defers to the private sector over government, has recognized the special need to legislate in the privacy arena. As they said earlier this year:

> Enforcing the consent rule will be difficult./ But it is worth a try. It would give information gatherers a push in the rights direction. Companies would collect and resell information more discriminately. And people who cherish their digital privacy would have the means to protect it -- which is as it should be." February 10, 1996.

The positions of USA Today and The Economist also mirror public opinion polls which routinely find that approximately 9 out of 10 American believe that personal information should not be sold by marketing companies with explicit permission. (Time/CNN 1991, Yankelovich 1995).

To the best of my knowledge, the question has never been asked in a public opinion poll whether a law should require that marketing firms obtain permission form parents before selling data on children. Based on these other polls, my guess is that the number in support would approach 95%.

SECTORAL DEVELOPMENT OF PRIVACY LAW

My third point today is that it is entirely consistent with the development of privacy law to pass a measure that protects certain classes of data. This approach,

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which has come to be known as the "sectoral approach," began with the enactment of the Fair Credit Reporting Act of 1970 following concerns about abuse in the credit reporting industry. Subsequent federal acts protected banks records (Right to Financial Privacy Act of 1978), cable subscriber records (Cable Act of 1984), electronic mail (Electronic Communications Privacy Act of 1986), and video rental records (Video Privacy Protection Act of 1988).

Perhaps the clearest precedent for the Children's Privacy Protection and Parental Empowerment of 1996 is the landmark federal privacy legislation that established safeguards for educational records. The Family Educational Right to Privacy Act of 1974, sometimes called the "Buckley Amendment," set out extensive privacy requirements for educational institutions receiving federal aid.

Let me read for you just few of the key provisions.

> No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parent of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the educational records of their children. . . .
>
> 20 USC § 1232g(a)(1)(A)

> No funds shall be made available under any applicable program to any education agency or institution unless the parents of student who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to ensure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.
>
> 20 USC § 1232g(a)(2)

> No funds shall be made available under any applicable program to any education agency or institution which has a policy or practice or permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization. . .
>
> 20 USC § 1232g(b)(1)

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> No funds shall be made available under any applicable program to any education agency or institution which has a policy or practice of releasing, or providing access tom, any personally identifiable information in education records other than directory information, . . .
>
> 20 USC § 1232g(b)(2)

Of course, FERPA acknowledges several exceptions to these general principles, and the key terms are carefully tailored to the specific needs of educational records. But certain points about this well established precedent are clear:

- Congress has already recognized that there is a need to establish privacy rights enforceable in law for personal information about young people
- These privacy rights include both limitations on the improper disclosure of information and the right to inspect information
- It is appropriate and necessary to allow parents to exercise these rights on behalf of their children
- Strong penalties are appropriate to ensure that these rights are upheld

Returning to the bill before this committee, the CPPEA largely applies the FERPA approach to the protection of information about children with certain additional provisions that respond to special problems that are already well documented. The approach is a sensible one, and FERPA has stood the test of time. No universities have been shut down because of the Act, but the privacy of children's educational records is more secure because Congress did not fail to act when it had the opportunity to create privacy protection for young people.

PROPOSED CHANGES

EPIC supports the Children's Privacy Protection and Parental Empowerment Act of 1996, and we commend Rep. Bob Franks of New Jersey and the other sponsors of the bill for taking action in this area. There is one change that we would like to see, and then there are several possible changes that might address some of the concerns that have been raised by others.

1. First Amendment Issues

We are specifically concerned about the provision that would penalize the knowing distribution or receipt of "any personal information about a child, knowing or having reason to believe that this information will be used to abuse the child or physically harm the child." While we share the view of the bill's sponsors

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that such activity raises great concern, the provision as drafted may fail a First Amendment challenge because it does not appear to satisfy the Supreme Court's requirement that speech which is criminally liable must both urge a lawless act and the incitement of that act must be likely. Brandenburg v. Ohio, 395 U.S. 444 (1969). We would appreciate the views of other civil liberties organizations on this point.

2. Age Identification Requirement

Some questions have also been raised by other organizations about the age identification requirement. Some organizations believe that this provision will force list brokers to collect more age-specified data so that they can be assured that they comply with the Act. This is clearly not the intent of the bill. The bill operates so that personal information is only covered for an individual "identified as a child," where a child is defined as a person under the age of 16. I believe that in practice this would mean that if a list broker asks for age-specific information and learns that the person is under 16, or uses other techniques to enhance the data so that the person is readily identified as a child, then the requirements of the bill would apply. Beyond these two circumstances, it is not clear to me that the bill would have further application. I do not believe that list brokers will have a proactive duty to run lists against names of children.

As for the positive consequences of the bill for the industry, the bill should cause list brokers to be more selective in the collection of personal information and more open with parents about data collection practices. Such a process will establish consumer confidence as well as protecting the rights of children.

3. Exceptions

We also recognize that there are some proposals to create exceptions in the coverage of the bill for certain organizations. We do not necessarily oppose these exceptions, but we do urge the Subcommittee to look carefully at the breadth of the exceptions proposed. Statutory exceptions work best when they are narrowly tailored to specific circumstances. We would also like to see those groups that are seeking to avoid federal coverage establish clear privacy policies that describe how they will protect the information on children and make these policies readily known to the public.

Of course, if incidents do arise where an institution that has received this special status is responsible for a privacy harm to a child, then we would immediately urge the Congress to reconsider the exception and look at amendments to the Act.

4. Criminal Penalties

We also recognize also that a privacy bill which provides for criminal sanctions would go further than other bills of this type. (Though, in fact, the Privacy

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Act of 1974 established criminal penalties for certain types of violations). If the Committee decides to revisit the issue of criminal penalties, then I would recommend that you increase the civil relief from at least $1,000 to at least $5,000. The reason for this is that a reoccurring problem with well intended privacy legislation is that the in the absence of a clear penalty or a strong civil inducement to file suit, statues are ignored, bad practices develop, and the rights that should be protected in theory and ignored in practice.

CONCLUSION

The industry has argued that it is not necessary to pass this bill at this time because there has been no clear tie between marketing practices and specific harm to a child. They say this even after it has become known that the marketing industry has used prison inmates to process personal information that should be safeguarded and after a reporter obtained a list of families with young children using the name of the murderer of Polly Klaas.

I can only ask whether the industry is really prepared to require a dead child before it will consider passage of this sensible legislation. I don't make this point lightly. Privacy legislation to protect the disclosure of motor vehicle records came about only after the tragic murder of Rebecca Schaeffer. It would be more than a tragedy if it took a similar incident before this measure was passed.

This concludes my testimony. I would be pleased to answer your questions.

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Mr. MCCOLLUM. Thank you very much, Mr. Rotenberg, and I want to thank the entire panel.

I'll recognize myself for 5 minutes, and then Ms. Lofgren and anybody else who comes in. We'll try to keep to that 5 minutes, and if we don't have a larger group wander in, we'll probably do a second round in that case.

First of all, Mr. Franks, I'd like to know your thoughts with regard to some of the exceptions you mentioned in your testimony. I don't think you actually read that part of it, but in your written testimony you said that you thought perhaps you should provide in this legislation an exemption for law enforcement, government agencies, and nonprofit organizations exclusively engaged in the search for missing children. What do you think about accredited colleges and universities, summer camps, private academies? We've heard from all of those groups, particularly saying that they would be adversely affected if they didn't have access to mailing lists and couldn't deal with mailing without parental consent.

Mr. FRANKS of New Jersey. Mr. Chairman, let me indicate again that I believe the vast bulk of the 800-plus companies that offer lists of children for a variety of purposes are honorable, decent businesses that are obviously in business for profit, but do so motivated and at least with the thought in mind that children who are in their database need to be protected.

However, I think we should grant these exemptions very narrowly and very carefully. I do believe that there are companies that are extremely useful to educational institutions, for example, as they seek to recruit prospective students. It's certainly in the interest of the family, the interest of the student, the interest of the parent, that that information be freely distributed.

Let me point out, Mr. Chairman, I don't know many 11- to 13-year-olds who are applying for colleges. This bill only applies to people, young people, 16 and under—under 16. So my point is that the vast bulk of kids who are looking for information about institutions of higher learning generally tend to be exempted from the application of this bill with the age limit where it is structured currently.

But in terms of both helping and assisting those organizations which do a marvelous job trying to locate missing children, we should not stop the flow of information to those organizations as long as that is the exclusive purpose for which that information is received by that entity.

Mr. MCCOLLUM. What about summer camps and private academies that cater to kids who are, you know, teenagers younger than 16? And there are many across the country who do.

Mr. FRANKS of New Jersey. There certainly are. There certainly are.

Mr. Chairman, I would leave that to the ultimate disposition of the subcommittee. I have heard arguments on both sides of this issue. Again, most of these summer camps are wholly reputable, most of them certified or registered with their respective States. These are wonderful opportunities for young people to participate in, and parents are benefited by having that information.

Again, I think it's the ultimate disposition of the information about the kids—we've got to make certain that, if the sale takes

place between a list broker and a summer camp, that the summer camp doesn't in turn take the information about their campers or their applicants and sell it to some other party for wholly unrelated purposes. At that point, if that were to happen, I think it's prudent to make certain we secure the parents' consent.

Mr. MCCOLLUM. Mr. Klass, what do you think about exceptions? Do you agree there should be some, such as for law enforcement and government agencies and nonprofits, like Mr. Franks suggested, or do you think that this bill as it is now written ought to be passed exactly as it is in that regard?

Mr. KLASS. Well, I agree with Mr. Franks that, for children that are over 16, that it's a wonderful opportunity for universities and colleges and other institutions of higher learning to do some recruiting. I would take even more exception than Mr. Franks regarding summer camps, however, because I know that there are many summer camps throughout this country that do not screen their prospective counselors. Lions Club is a very good instance. They don't screen counselors at all, and there have been incidents regarding the counselors in these camps with children. So I think that the exceptions should be made narrowly, as Mr. Franks suggested, but I would be very, very careful before I would allow any kind of information to go to summer camps, which do tend to be rather unregulated in many States.

Mr. MCCOLLUM. It occurs to me—and I'm going to perhaps ask the whole panel to comment on that, this last question, as well as the one I just asked, but it occurs to me that there is another method that could be put forward other than parental consent to be the operative provision of your bill, Mr. Franks, and that would be less restrictive perhaps on the list marketers, but, nonetheless, perhaps achieve some measure of your purpose. And that would be to require list marketers to write a formal notice to every parent of every child that they're going to list, or want to list, or have access to information on, notifying them that, unless the parent affirmatively takes some step, perhaps rips off the coupon at the bottom of the sheet and sends it back in that says we don't want our child's name on your list and distributed, that that child's name will be, in fact, subject to distribution. Now I haven't asked the industry groups. They don't put that in their testimony. They probably don't want to do that, either, but that is the type of alternative that occurs just off the top of my head. What's your reaction to that idea?

Mr. FRANKS of New Jersey. Mr. Chairman, it's a question of where we want to place the affirmative burden. I believe the affirmative burden ought to be put on the company that wants to sell personal and sensitive information about your children.

Mr. MCCOLLUM. And that——

Mr. FRANKS of New Jersey. They ought to secure the affirmative consent of the parent. Mr. Chairman, you and I get a lot of mail every day, perhaps more than most American families, but with the increase in direct mail of all sorts, most of it unsolicited, the likelihood that the degree of attention, scrutiny, that will be paid to that letter that you're suggesting might come from the data base company would be carefully reviewed, the consequences fully un-

derstood, in my judgment are minimal. I don't think that's the kind of protection that we're seeking in this bill.

Mr. MCCOLLUM. Well, I ask it because that is the format that is used so often in the Government laws that we have, and they may not be very effective. I wouldn't argue with you that they might not be as effective as yours, but it's something we ought to discuss.

Mr. FRANKS of New Jersey. Mr. Chairman, one final comment.

Mr. MCCOLLUM. Certainly.

Mr. FRANKS of New Jersey. I think we use that standard as it relates to adults. These are not little profit centers. These are our children. They deserve an additional special level of protection.

Mr. MCCOLLUM. All right, I'm going to let Ms. Lofgren ask questions, but I would like, first, to find out if anyone else—Mr. Rotenberg, Ms. Bell, Mr. Klass—has a comment on this last approach, as to do you agree with Mr. Franks; do you disagree? Do you think there's room for any other option or alternative other than actual direct consent, which I'm sure the marketers are going to say to us today would, in effect, put them out of business, because they wouldn't get that consent?

Yes, ma'am?

Ms. BELL. Yes, I would concur with Mr. Franks. I just know what kind of direct mail I get. I don't even open it, most of it. You can tell when something's coming from a direct marketing agency. I just don't open it. So to place that affirmative burden I think would be a very responsible decision.

Mr. MCCOLLUM. Mr. Rotenberg.

Mr. ROTENBERG. Well, I think the USA Today editorial, which I cited, went on to say, in fact, the question really comes down to who the burden should be on. Should it be on the person who expects to protect his or her privacy or should it be on the business that is trying to extract some commercial value from the personal information? And particularly in a situation involving children, I think the responsibility should be on the business.

And I should say also, Mr. Chairman, in response to your earlier question, in a lot of these areas the establishment of privacy law doesn't, you know, shut down industry. I mean, the family privacy law that I quoted from 1974 hasn't shut down any universities or schools, to my knowledge. What it does is it forces institutions to be a little bit more responsible and a little bit more forthcoming in their handling of personal data. They will have to change their practices. In some cases they won't get some information that they'd like to get.

Mr. MCCOLLUM. But you wouldn't argue——

Mr. ROTENBERG. But that's what the privacy law is supposed to do.

Mr. MCCOLLUM. But, Mr. Rotenberg, you wouldn't argue with the proposition that, as far as direct mail houses that deal in hundreds of thousands of children's names every day of the year, that they're unlikely to get a very significant response back to a mailing to the parents that they might do saying, "Would you like to have your child's name included for the purposes of umptee-umptee-umptee-ump? If you would, please sign this form and send it back." I would bet that would not get a 10-percent return.

Mr. ROTENBERG. Well, in fact, some marketers are doing that today. Not every business in the industry follows the opt-out procedure. Some businesses say, for example, we will not sell your information, and they build customer base on that principle. So I think this point is really very important, which is that if a privacy law is going to accomplish its goal, there has to be some change, because, you see, if you pass a law and the industry can say, in effect, "Oh, that's good; this is a law that won't affect what we're currently doing," then, of course, you really haven't done anything.

Mr. MCCOLLUM. Well, I'm going to come back, and I'll let Mr. Klass comment on anything he wants to relative to these things in a minute, but I want to let Ms. Lofgren ask—I said I was going to stick to 5 minutes, and my last question was ended at that moment. So, please.

Ms. LOFGREN. Thank you, Mr. Chairman. I think this hearing is very important. As the panel knows, I'm a cosponsor of this bill and happy to be so. Mr. Klass and I have discussed it on prior occasions, and I think the goal is one I share very much. The burden should be as you've described, in my view.

I do think, because we're having this hearing, there's an opportunity to do refinements that Congressman Franks has indicated he wants to do. We want to make sure that whatever statute we pass meets constitutional muster and is not defective and will be struck down.

I also wanted to ask a couple of questions that have been posed to me, some of which I think may not apply and some of which we may need to deal with. And one issue that was raised to me is the issue of children, or specially older preteens, 15-year-old kids, who seek out information on the Internet. They initiate a search for information, health care information or the like. I have a 14-year-old daughter. We have a great relationship right now, but I also know some of her friends don't have necessarily a great relationship with their mothers, and sometimes want to seek information out and get E-mail and information back. I don't think—I don't see how this bill precludes that, but I think that would create an issue of some sort that we need to address. Do you have thoughts on that, Mr. Franks?

Mr. FRANKS of New Jersey. Ms. Lofgren, first of all, thank you for your support of the measure. Let me make an observation that, No. 1, concerning the Internet, there's been a lot of questions about how the bill will apply to the Internet. The problem being cited by a whole host of folks is that when you deal with the Internet, the person with whom you're dealing often doesn't know the age of the person making the inquiry, and it's often very difficult, if not impossible, to know whether you're dealing with somebody 12 or 22.

Ms. LOFGREN. Right.

Mr. FRANKS of New Jersey. The bill is triggered only in those instances where the person who seeks to sell the information knows for a fact that the person about whom they're selling information is a child. They have to have that affirmative knowledge. In the absence of that knowledge, names and information can be sold.

Ms. LOFGREN. And I guess the question posed to me was, let's say you have a 15-year-old kid who is depressed and signs on to kind of a suicide prevention chat line and gets information back.

That's not a commercial operation generally anyhow. Mr. Rotenberg, can you see the validity of this, because I do think we need to protect that kind of access to information?

Mr. ROTENBERG. I think that's a very important question that you're asking because, of course, in trying to pass a privacy bill, the last thing we'd want to do is injure the privacy interests of the child. And the first thing to say is that, as far as I know, virtually all the responsible organizations that operate suicide lines, and so forth, are not also acting as list brokers. I mean, can you imagine, you know, a health center saying, on the one hand, come to us with your gravest concerns and, on the other hand, here are clients available for sale segmented by ZIP Code and annual income? It's very hard to conceive.

The other point—and I think Mr. Franks said this very well—is that the provision really says, if you ask age-based information, you are opening yourself up to coverage under this bill, and you can hardly be asking someone, you know, "Are you 12? Are you interested in this cereal," and not expect the bill to apply.

But I have said in my testimony—I've gone into this issue in some detail—I don't think the bill puts any responsibility on list brokers, for example, to run their databases against names of children. I don't think anyone——

Ms. LOFGREN. I read that, and I'm very interested in that.

Mr. ROTENBERG. No, I don't see that at all.

Ms. LOFGREN. It may be that we need to make that explicit in the bill in some way——

Mr. ROTENBERG. Right.

Ms. LOFGREN [continuing]. To make sure that we don't create further data collection——

Mr. ROTENBERG. Yes.

Ms. LOFGREN [continuing]. Which is not what we want to do.

I guess the other thing I'd like to do is some of the first amendment advocates on the Internet, I'd like to solicit them for specific issues, and then maybe we could all go through them together and see—make sure that the ability of teens to get information they want of a wholesome nature, their privacy rights are protected.

The other issue that's been raised to me—you've addressed the finding missing children issue—is educational institutions that are providing information of a helpful nature to kids, and I think that we'll hear testimony later from Frederic Siegel, and I read through his written testimony, talking about outreach to eligible colleges, universities, that are participating; that they don't—it's nonprofit. It's solely to identify students and bring financial aid information to them. I don't honestly know very much about this group, but I do know sometimes, especially with disadvantaged kids, it's hard to get parental consent. I remember about 5 years ago a young girl, my daughter's classmate whose family was a mess, and we got—I arranged a scholarship for her to science camp, but her mother had to sign to let her go, and we never could pin down her mother to sign to let her go to the science camp, and so she didn't get to go. So sometimes—I mean, I'm not suggesting that should be changed, but oftentimes you need to deal directly with a kid whose parents—and in a school setting I guess I'd be more comfortable about that, if the school counselor made the information available

or something like that. I don't know that this bill precludes that, but I assume we'd explore that together to make sure that the goals we're trying to achieve could be met with that kind of outreach.

And I guess the final thing I would like to say just as a parent is I understand that people say, you know, this has never been used for pedophilia, and I haven't done a data search and I don't know. But, as a parent, I don't want my kids' information displayed all over the country.

I can remember—you were talking about the ice cream—the times when my kids were getting 31 Flavors and they're begging to get a free ice cream cone and filling that out, and I think I have let them fill it out, and it never once occurred to me that that information would be kind of put out into the market. And if those little sheets had said, "Fill this out and your kid's name and this information is going to be sold," in great big letters, I would not have done that.

And I think parents, no matter what has happened so far, parents have a right to make sure that personal information about their kids is personal. And you're right; I mean, the first thing we ought to be thinking about is protecting our children. There's nothing more important, and I'm glad you introduced this bill, and I'm eager to make sure that it meets all the needs that we hope that it will achieve.

Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you, Ms. Lofgren.

I'm going to take a second round. If you want to add in a minute, you certainly may, simply because I think there's some unanswered questions that it's only fair we get some response from the proponents on.

Mr. Klaas, I particularly want to ask you this one. One of the witnesses that will come up in the next panel says, "The most common way for child predators to target victims is not through any types of lists at all. Child molesters usually youth organizations and groups, like Little League, Boy Scouts, and so forth, which give them access to and authority over children."

Whether you agree or disagree with the fellow who's saying that in terms of we don't need to do anything about this problem on these lists, is that generally an accurate statement, based on your knowledge? Is this the truth?

Mr. KLAAS. Well, based on my knowledge, I think it is generally an accurate statement. Now I've researched this and I've spoken to Dr. Chris Hatcher, a clinical psychologist with quite a background in this area of abducted and abused children, and also with Ken Lanning, who is with the Behavioral Sciences Unit of the FBI, and asked them specifically if, in fact, list brokers—if, in fact, lists could be used to target children, and they both answered in the affirmative; that, indeed, there is a stereotypical, dirty old man that will hang around the playgrounds, that there are the pedophiles that will get themselves involved in occupations that give them large access to children, but that we are dealing with probably the most intelligent element of the criminal community, one of the most motivated elements of the criminal community, and certainly the highest recidivist element of the criminal community, and that

there are those that are sophisticated enough that they will, if they have not already used these kinds of lists to access children. I mean, if there is somebody that is interested in 8-year-old, blonde, blue-eyed girls and they're able to find out where the 8-year-old, blonde, blue-eyed girls live within a certain zip code, it really cuts down on their homework and makes things a lot easier for them.

Mr. MCCOLLUM. You're the only one who didn't comment on the question I asked about notice to parents going the other way, the inverse, where you'd send a notice out that said, "Hey, we're going to list you unless you tell us not to."

Mr. KLASS. Yes, I don't know, I hate to be cynical, but I suspect they'll come up with something like this: "No sweepstakes, no promises, no gimmicks, just gifts." You know, "Just give us your consent. Let us put your children on the list and we'll send you"—it will be 32 flavors; your kid will be the 32d flavor on the Baskin-Robbins. I mean, I just don't know. I just don't have a lot of trust in some of these companies.

As Mr. Franks said many times, the vast majority of the companies involved in this practice I think are totally reputable, but I think that there are unapologetic rogue elements of the industry that will pretty much and have proven that they will do almost anything for profit, and I'm sure that the ways that they would come up with to try and get parental consent would tend to be misleading and——

Mr. MCCOLLUM. And that would be equally true, or more so, if instead of consent, we just sent it out and said, "Look, you're on notice that we're going to do this unless you send a notice, something back into us saying, 'Don't do it.'" In other words, here the law says you can take your name off the list; we're notifying you you can take your kid's name off the list and it will never be used, but if you don't send it back in, your kid's name is going to be on the list. I assume you think that's a bad idea.

Mr. KLASS. I think that the way that Mr. Franks has it fashioned right now is the best way to proceed, yes, sir.

Mr. MCCOLLUM. Ms. Bell and Mr. Rotenberg, I didn't ask either one of you about the exceptions, either what Mr. Franks suggested or broader exceptions. He has suggested, again, exceptions for law enforcement, government agencies, nonprofit organizations exclusively engaged in the search for missing children. I threw out to him the colleges, and so forth, which he answered with regard to the age, but I also threw out summer camps, private academies, which Mr. Klass directed his attention to. Are there exceptions, Ms. Bell, of any type that you would make? Do you agree with Mr. Franks' proposed exceptions? Do you think there ought to be others? Should we—I know you might not be able to think of all of them, but is it appropriate to have any exceptions, and if so, what?

Ms. BELL. I did review Mr. Franks' amendment or proposed legislation, and I would concur that there should be exceptions made for law enforcement and for nonprofits in the business of identifying missing and exploiting children and for educational institutions. I have not given much thought about camps, and I'd like to think about that.

Mr. MCCOLLUM. How about you, Mr. Rotenberg?

Mr. ROTENBERG. Well, Mr. Chairman, I said a little bit about this issue in my testimony. I think the exceptions need to be looked at closely. As I read them currently, they're fairly broad, and my feeling about the statutory exceptions, that they work best when they're specifically tailored to a particular reason, to certain circumstances that justify them, and then, of course, I think it may be appropriate to allow them.

I also suggested, as part of a quid pro quo for those organizations that would fall outside of coverage of this bill, that they should, nonetheless, develop privacy policies for their handling of information about children and make known to the public what those policies are. I think that would be just a good practice for everyone concerned. And, of course, if problems do arise with these groups that fall outside coverage, then I think we have to come back right away and revisit the issue.

Mr. MCCOLLUM. Mr. Rotenberg, the Federal Trade Commission, as I understand it, oversees the mailing list industry.

Mr. ROTENBERG. Yes.

Mr. MCCOLLUM. Do you know if efforts are being made by them to regulate the Internet and direct marketing mailing lists? Do you know?

Mr. ROTENBERG. Well, I'll say they held 2 days of hearings in June on this topic. I participated in those hearings, along with Mr. Franks. The first day looked at the Internet, and the second day looked specifically at the issue of data on children. My sense of the FTC's position at this point is that they would probably not support regulation of the Internet as a general matter, but certainly Commissioner Varney, with regard to the issue of children's privacy, has suggested that there is a need to act in this area. And so I suspect the FTC may propose something to protect children's privacy. That's where I understand them to be at this point.

Mr. MCCOLLUM. Mr. Franks, you're anxious to get in here, and I will, and then I'll conclude my questioning with you responding to whatever you'd like of any of this.

Mr. FRANKS of New Jersey. Mr. Chairman, I want to recognize something that Ms. Bell and Ms. Lofgren brought up that might be adding somewhat of a new element, but I think it makes a great deal of common sense. If at every point of sale, at every point of registering or providing information about your child to a particular vendor, not a list broker, but a birthday club, the fast food store, the supermarket, wherever you sign your kid up, if there is a big warning or notice saying that the information you are about to provide will be made available for sale, I find that's an intriguing suggestion, Mr. Chairman.

Mr. MCCOLLUM. Do you think that might obviate the need for some of what you're proposing?

Mr. FRANKS of New Jersey. No, Mr. Chairman, I think it would be a wonderful adjunct, though.

Mr. MCCOLLUM. All right, I just wanted to find out. I've got to pursue that.

Ms. Lofgren, do you have any followup questions?

Ms. LOFGREN. Just a couple of more questions. I think requiring that kind of sale notice would have a salutary impact.

Thinking about the Internet in particular, I'm eager to get some feedback from the high-tech industry on issues that we may not be seeing here. One of the things, for example, Magic Cookie, how does that relate to this, if at all, and do we have the ability to regulate that—or we may have the legal ability, but do we have actually a practical ability to deal with that on the World Wide Web? I think the exploding nature of the Internet, my guess is—I don't know what the schedule is for this bill, but given how few days we have left in the Congress, my guess is probably it's next session that we'll get action on it. And although in a way that's regrettable, it also gives us a little bit of time to get information from Internet experts on this whole thing.

I guess the final thing I would say—and I don't have a lot more questions—is that there are two issues here: one, the issue that's been raised about abuse of children, sexual abuse and others, but there's a broader issue: whether or not that has yet occurred, whether or not it would ever occur. Children's privacy deserves, in and of itself, our attention, and I think parents, almost universally, all the parents I know in my neighborhood and at the school really very jealously guard the privacy of their children. And if there were never a criminal law issue, that alone is sufficient to take action to make sure that that very normal, and I'd say almost universal, parental desire is met in a way that is respectful of the first amendment and the needs of children in terms of scholarships. I know that's not a problem, and looking at it, maybe for those few exceptions that we narrowly carve out or we need to make explicit that whatever information is collected cannot be sold to anyone for any purpose or can only be sold to like or provided to for-free or for-cost-like institutions, for example, the SAT's; you know, maybe they could sell it to the college board test for their cost, not for profit, or something of that nature, to make sure that the exceptions don't explode into something that don't really deal with the problem. And I'm eager to work on those issues with all of you, and I thank you for being here.

Mr. MCCOLLUM. Thank you, Ms. Lofgren, and thank all of the panel. I appreciate very much your coming today, Mr. Franks, in particular.

Mr. FRANKS of New Jersey. Thank you.

Mr. MCCOLLUM. We will go on to our second panel now. I would like to introduce the witnesses for the second panel, and as you're called, please come up and take a seat.

Our first witness is Sergeant R.P. "Toby" Tyler, supervisor of the Crimes Against Children Detail at the San Bernardino, CA, Sheriff's Department. As a special investigator in this detail for more than 17 years, Sergeant Tyler has served as a guest lecturer for the FBI and the Children's Institute International, and is a court-recognized expert witness in numerous court trials. The recipient of 11 major awards in recognition of his intervention and prevention of crimes against children, Sergeant Tyler's work addressing child sexual exploitation has been published in a variety of national and international journals.

Our second witness is Frederic Siegel, executive director for enrollment management at George Washington University in Washington, DC. He is responsible for the admission, financial assist-

ance, and enrollment research functions at the university. Mr. Siegel received his bachelor of arts degree from Brandeis University and his master of arts degree from the University of Michigan. With more than 20 years of experience in the field of education, Mr. Siegel has also served as the director of admissions for both the George Washington University and Boston University.

Our third witness is Richard Barton, senior vice president of congressional affairs at the Direct Marketing Association, a trade association representing 3,600 companies that use data base information. Joining DMA in 1978 as vice president of public affairs, Mr. Barton became the senior vice president of governmental affairs in 1985 and is currently in charge of congressional relations for all DMA issues. Previously, Mr. Barton spent 13 years on the staff of the House Post Office and Civil Service Committee and 5 years as staff director of the Subcommittee on Postal Operations and Services. He received his B.A. in government from Louisiana State University and his M.A. in political science from the University of North Carolina at Chapel Hill.

Our fourth witness is Martin Lerner, president and founder of American Lists Corp., a leading provider of mailing lists of students to thousands of educational organizations throughout the United States. The founder of American Lists Corp., Mr. Lerner has served as the company's president and chairman since 1965. In addition to his responsibilities with American Lists Corp., Mr. Lerner has also served as a director of the National Center for Missing & Exploited Children since 1993. Mr. Lerner and American Lists have assisted the center in various campaigns and have been responsible for providing leads from its children's database which have located more than 30 missing children.

Our final witness today is Danta Cirilli, president of Grolier Enterprises, which is the world's largest distributor of children's books through the mail. Grolier serves over 36 million around the world as publishers of Disney and Dr. Seuss books, the Book of Knowledge, and hundreds of other educational materials. Mr. Cirilli has been with Grolier for over 36 years, serving in a number of positions, including vice president of operations and president of Grolier Telemarketing. He has been president of Grolier Enterprises for 7 years.

I'd like to welcome all of you here today. I appreciate very much your coming. I think we'll simply go in the order in which I introduced you, for lack of a better reason on my part.

Sergeant Tyler, let me say at the outset that all of the written testimony each of you will have submitted will be admitted to the record, without objection. Hearing none, it is. So you may feel free to summarize. You do not have to give your entire testimony, and certainly it might be a good thing if you don't in the sense of the timetable.

Sergeant Tyler.

STATEMENT OF R.P. "TOBY" TYLER, SERGEANT, CRIMES AGAINST CHILDREN DETAIL, SAN BERNARDINO SHERIFF'S DEPARTMENT

Sergeant TYLER. Thank you. Chairman McCollum and members of the subcommittee, I would like to express my appreciation for

the invitation to testify on the Children's Privacy Protection and Parental Empowerment Act, H.R. 3508.

I've been a law enforcement officer for more than 27 years. For more than 17 years, I've been assigned as an investigator and supervisor for specialized crimes against children detail, responsible for the investigation of child sexual abuse and sexual exploitation of children. I lecture at three universities as well as the FBI Academy on this subject, and recently was an invited speaker at the World Congress Against the Commercial Sexual Exploitation of Children in Stockholm, Sweden. I am also child safety consultant with Metro Mail Corp.

My concern with H.R. 3508 focuses on the fact that child safety is the purported inspiration and motivation for this legislation. The fact is H.R. 3508 does nothing to enhance child safety while diverting attention away from needed legislation that can factually offer safety for the children of this country.

This legislation seeks to remove virtually all demographic data relating to children from commercial mailing lists because a child sex predator might use such a list to target a victim. As a law enforcement professional who's worked in the child sexual abuse and exploitation field for more than 17 years, I have never heard of such a list being used or even being contemplated as a possible source of usable information to child sexual predators. I've interviewed hundreds of child sex predators during investigations, but also after sentencing, when they were in jail, prison, or treatment facilities with nothing to lose by being honest. I reviewed the leading pedophile publications, the how-to publications, such as "How To Have Sex With Kids" and the "Child-Lovers Handbook to Better Child-Loving," as well as other similar documents and online files. None have ever suggested that commercial mailing lists would serve any purpose or value to persons seeking sexual contact with children.

I believe this is because child predators get nothing from commercial mailing lists which is of use to them. Child predators are visually-focused. They want to see what a child looks like. These lists provide nothing to indicate a child's looks or vulnerabilities. They are useless to a predator. The first suggestion that such lists could be used by a child sex predator appears to have originated with this legislation.

Are there lists that child sex predators use to locate potential victims? Absolutely. The most common list used for such purposes is the common list available to us: the local telephone directory, combined with your local newspaper. Many newspapers publish photographs of young cheerleaders, boys' and girls' sports clubs, 4–H Club members, et cetera. These photographs typically identify the children and it takes little effort to open the phone book and identify the probable phone number and addresses of these children, all potential victims.

The second most common list used for targeting children are the online lists where persons seeking electronic pen pals are listed. For example, one can access the pornographic Internet Web pages of the admitted pedophile Donchan, and one of the links on Donchan's Web page is the link to love.com, a directory for persons 18 and under. This is a list of young people who are seeking e-mail

pen pals. The list includes listings such as: Karen, 12, in New Jersey; Karina, 17, in Florida; Crystal, 15, in North Carolina; Ashley, 13, in Indiana; Sharon, 13, in New York; Kat, 12, in California; Chuck, 5 years old, in Tennessee.

The most common way for child predators to target victims is not through any types of lists at all. Child predators frequently join youth organizations and groups such as Little League, Boy Scouts, and numerous other organizations which give them access to, authority and control or power over, children.

The challenge has been raised by the advocates of this legislation that we should not wait for evidence that these lists have been used to target a child victim. Instead, there should be a preemptive strike to remove the possibility that such lists could be used. Perhaps we need to pause and reflect on the logical or natural extension of this logic. For instance, we should eliminate the printing press, so that child pornography magazines can't be published, which, of course, also solves the problem of telephone directories and newspaper photos being used by child sexual predators to target victims; eliminate the availability of videotape technology, including camcorders, because we know that this technology has factually been used to sexually exploit children, and that the child pornography has been distributed in this fashion; eliminate computer networks, including America Online, CompuServe, and, of course, the Internet, since we know factually that child pornography is distributed via online services and children have been seduced away from their homes into the arms of child sex predators via these online services.

Of course, such considerations as eliminating the printing press, videotape cameras, and related technologies, as well as computer networks, are absolutely unreasonable and would not stop the sexual exploitation of children. Effectively abolishing commercial mailing lists, which have no known link to child exploitation, is unreasonable and would not stop child exploitation.

Instead of spending time and energy on this nonissue, I believe we should focus attention on the real issues facing children today. In discussions and in correspondence with staff members of several legislators, I have pointed out several issues which cry for legislation which factually offer enhanced safety and protection for children. These include making it a Federal offense for convicted sex offenders to seek or accept employment or a volunteer position working with children; requiring background checks on individual who seek employment or volunteer positions in working with children's organizations; making it a Federal crime to engage in false personification—that is, using false name, age, and other information—in communication with children over the Internet or other online services for the purpose of abusing or abducting that child, and creating a rebuttable presumption in existing Federal child pornography statutes that an image appearing to be that of a child is presumed to be a child. This would shift the burden to the defendants in the extensive and wasteful litigation in which defendants are falsely claiming that the child pornography they are found with is computer-generated.

Commercial mailing lists have been used in a positive way on behalf of children. Examples include parentally-abducted children

who have been located through the use of these lists. These lists are also used by organizations which seek to provide children with educational opportunities and resources.

In closing, I'd like to say we can prove that children have benefited from commercial mailing lists. We can't point to a shred of evidence that such lists can, have, or would be used to harm children. It is time to focus on the real issues. Thank you very much.

[The prepared statement of Sergeant Tyler follows:]

PREPARED STATEMENT OF R.P. "TOBY" TYLER, SERGEANT, CRIMES AGAINST CHILDREN DETAIL, SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT

Chairman McCollum and Members of the Subcommittee, thank you for the invitation to testify on The Children's Privacy Protection and Parental Empowerment Act, H.R. 3508.

I have been a law enforcement officer for more than twenty-seven (27) years. For more than seventeen (17) years, I have been assigned as an investigator and supervisor of a specialized Crimes Against Children Detail, responsible for the investigation of child sexual abuse and sexual exploitation of children. I lecture at three universities—as well as at the FBI Academy—on this subject and recently was an invited speaker at the World Congress Against the Commercial Sexual Exploitation of Children in Stockholm, Sweden.

My concern with H.R. 3508 focuses on the fact that "child safety" is the purported inspiration and motivation for this legislation.

The fact is, H.R. 3508 does *nothing* to enhance "child safety," while diverting attention away from needed legislation that can factually offer enhanced safety for the children of this country.

This legislation seeks to remove virtually all demographic data relating to children from commercial mailing lists, because a child sexual predator *might* use such a list to target a victim.

As a law enforcement professional who has worked in the child sexual abuse and exploitation field for more than seventeen years, I have never heard of such lists being used or even being contemplated as a possible source of usable information to child sexual predators. I have interviewed hundreds of child sexual perpetrators during investigations, but also after sentencing when they were in jail, prison or treatment facilities—with nothing to lose by being honest. I have reviewed the leading pedophile "how to" publications, such as "How to Have Sex With Kids" and the "Child-Lovers Handbook to Better Child-Loving," as well as other similar documents and on-line files. *None have ever suggested that commercial mailing lists serve any value to persons seeking sexual contact with children.*

I believe this is because child predators get nothing from a commercial mailing list which is of use to them. Child predators are visually focused—they want to see what a child looks-like. These lists provide nothing to indicate a child's looks or vulnerabilities-they are useless to a predator. *The first suggestion that such lists could be used by child sexual predators appears to have originated with the advocates for this legislation.*

Are there lists that child sex predators use to locate potential victims? Absolutely! The most common lists used for such purposes is the most common list available: the local telephone directory—combined with the local newspaper. Many newspapers publish photographs of young cheerleaders, boy's and girl's sports teams, 4H Club members, etc. These photographs typically identify the children, and it takes little effort to open the phone book and identify the probable phone number and addresses of these children—all potential victims.

The second most common lists used for targeting children are the on-line lists where persons seeking electronic "pen-pals" are listed. For example, one can access the pornographic Internet web pages of the admitted pedophile "Donchan" [web address provided on in master copy of testimony]. One of the links on "Donchan's" web pages is a link to the "love.com" directory for "18 and under." This is a list of young people who are seeking e-mail pen-pals. This list includes such listings as: Cedar Knolls, NJ, Karen, 12 years old; Orlando, FL, Karina, 17 years old; Franklinville, NC, Crystal, 15 years old; Indianapolis, IN, Ashley, 13 years old; Brooklyn, NY, Sharon, 13 years old; Carlsbad, CA, Kat, 12 years old; and Clarksville, TN, Chuck, 5 years old.

The most common way for child predators to target victims is not through any types of lists at all. Child molesters usually join youth organizations and groups

(Little League, Boy Scouts, etc.) which give them access to and authority over children.

The challenge has been raised by H.R. 3508 advocates that we should not wait for evidence that these lists have been used to target a child victim—instead, there should be a preemptive strike to remove the possibility that such lists could be used. Perhaps we need to pause and reflect on the natural extension of this logic?

Eliminate the printing press so that child pornography magazines can't be published, which will also solve the problem of telephone directories and newspaper photos of children being used by child sexual predators.

Eliminate the availability of video tape technology, including camcorders, since we know that children have factually been sexually exploited and child pornography distributed using this technology.

Eliminate computer networks, including America On Line, Compuserve and of course-the Internet, since we know factually that child pornography is distributed via on-line services and children have been seduced away from their homes into the arms of child sex predators.

Of course such considerations as eliminating the printing press, video tape, cameras and related technologies and computer networks is unreasonable and would not stop the sexual exploitation of children. Effectively abolishing commercial mailing lists, which have no known link to child exploitation, is unreasonable and would not stop child exploitation.

Instead of spending time and energy on this non-issue, I believe we should focus attention on the real issues facing children today. In discussions and in correspondence with staff members of several legislators, I have pointed out several issues that cry for legislation factually offering enhanced safety and protection for children. These include:

Make it a Federal offense for convicted sex offenders to seek or accept employment (or volunteer position) working with children.

Require background checks for individuals who seek employment or volunteer to work with children's organizations.

Make it a federal crime to engage in false personification (false name, age, etc.) in communications with children over the Internet or other on-line services, for the purposes of abusing or abducting that child.

Create a rebuttable presumption in existing federal child pornography statutes that an image appearing to be that of a child is presumed to be a child. This would shift the burden to the defendants in the extensive and wasteful litigation in which defendants are falsely claiming that their child pornography images are "computer creations."

Commercial mailing lists have been used in a positive way on behalf of children. Examples include parentally abducted children who have been located through the use of lists made available to a missing children organization. These lists are also used by organizations which seek to provide children and adolescents with educational opportunities or resources.

We can prove that children have benefited from commercial mailing lists. We can't point to a shred of evidence that such lists can, have or would be used to harm children. It's time to focus on the real issues. Thank you.

Mr. MCCOLLUM. Thank you very much, Sergeant Tyler.

Mr. Siegel.

STATEMENT OF FREDERIC A. SIEGEL, EXECUTIVE DIRECTOR, ENROLLMENT MANAGEMENT, GEORGE WASHINGTON UNIVERSITY

Mr. SIEGEL. Good morning. Thank you, Mr. Chairman and members of the subcommittee. It is honor for me to be called before you today to give testimony regarding such an important issue.

Accompanying me today are three of my colleagues: Brad Quin, the director of admissions and enrollment services for the College Board, and two colleagues from the George Washington University, Ron Willis, assistant to the president, and Mike Freedman, director of public affairs.

As already noted, I'm Fred Siegel, executive director for enrollment management and the director of admissions at the George Washington University in Washington, DC. Before coming to the

George Washington University, I was director of admissions at Boston University as well. Both GW and BU are members of the College Board, a national, nonprofit membership association of schools, colleges, and other educational organizations working to help students succeed in the transition from high school to college.

To begin, let me be clear. I support the goal and the intent of the legislation, H.R. 3508, the Children's Privacy Protection and Parental Empowerment Act of 1996, introduced by Representative Bob Franks. Indeed, I'm the father of a 4-year-old daughter, and I add parenthetically that I've learned already this morning that I've probably signed up for too many birthday party lists. [Laughter.]

Personally and professionally, I believe that we must do everything possible to protect young people from the evil forces in our society. I do share with my colleagues in collegiate admissions offices and in high school guidance offices across the country a commitment to providing students with the information necessary to make sound educational decisions. Such decisions are essential if students are to receive the type of education that transforms them into skilled workers and informed citizens.

With over 3,000 colleges and universities offering post-secondary education, almost 25,000 high schools, and 2.6 million high school graduates, the process of matching students with the appropriate educational experience and encouraging them to think critically about their future is often a complicated one. I'd like to tell you about how the George Washington University approaches this process.

One of the mechanisms used by GW to recruit students is the College Board's Student Search Service. The Student Search Service was established over two decades ago in an effort to increase the exchange of information between high school students and colleges and to provide the transition process—to improve the transition process from secondary to post-secondary education.

Last year over 3 million students taking the PSAT/NMSQT, SAT1, and advanced placement examinations provided detailed information themselves and gave permission to make it available through Student Search. Students' participation in the Student Search Service is completely voluntary and they pay no fees for participating.

Our participation in the Student Search Service has enabled the George Washington University, as well as over 1,200 other institutions in the country, to identify and contact a growing and diverse population of high school students. It allows us to invite highly-qualified students to apply to honors programs, alert students to special programs and scholarship opportunities, send financial aid information to students who indicate their parents cannot meet the full cost of a college education, send materials describing individual curricula to students intending to major in those fields, attract students to campus events, and send brochures that depict our university.

Both students and institutions benefit from this service. Students receive valuable information about colleges that are interested in them, about programs and services that could be helpful, and about financial aid and other scholarship opportunities that will help

them in pursuing a college education. Prior to a search contact, students often have little or no information, other than anecdotal news, about these institutions. We are finding that more and more students voluntarily choose to participate in the search process earlier in their high school years, as a way of helping to plan more effectively their academic futures. Colleges and universities benefit by expanding their outreach efforts to a broader geographic base and recruiting from groups that have been traditionally underrepresented on their campuses.

The College Board monitors compliance with eligibility rules for each and every participant of the Student Search Service. Only strictly eligible colleges, universities, and consortia of colleges and universities, scholarship agencies, governmental agencies, and nonprofit organizations may participate. Institutions participating in the program are required to sign an agreement ensuring that student names are used solely and exclusively to identify potential students and to bring to their attention the educational and financial aid opportunities available to them. The names may not be divulged to third parties or used to conduct market research. The agreement also insures that students' names are used only for nondiscriminatory purposes. Secondary uses of the names are not permitted. The College Board also monitors the content and substance of the messages sent to students by institutional participants as a part of its responsibility to insure compliance. Absolutely no commercial advertising of any sort is permitted in information sent to students by participating institutions.

Our participation in Search has enabled the George Washington University to expand enrollments, diversify our student body, and attract students who can benefit from our programs. It has been vital to our growth as a center of learning here in our Nation's Capital.

Unfortunately, H.R. 3508 in its current form would jeopardize and restrict this dissemination of information by the Nation's colleges and universities to potential students, particularly the mailing to students early in their high school years. By requiring the written consent of a parent or guardian for those students under the age of 16, the legislation would render the process of providing information about future educational opportunities so cumbersome as to be prohibitive. The effects on students from homes in which English is not the first language or on students from homes in which they are first-generation college-bound would be devastating. Colleges and universities would be limited in their ability to recruit students who are well matched to their campuses on the basis of grades, financial need, special interest and talents, race or religious background. Gifted and talented students who are eligible to participate in advanced programs at colleges and universities could not be identified and contacted about these unique opportunities.

There are other educational consequences of this legislation as well. For example, restricting the identification of, and outreach to, students who require financial assistance for higher education. with the rising cost—and, indeed, the rising benefits—of higher education, it is imperative that children are made aware of financial assistance and scholarship opportunities as early as their freshman year in high school. Fewer students would be identified

and contacted by corporations, nonprofit, civic, and religious organizations with information about scholarships for which they might qualify. Students listed on the College Board's National Hispanic Recognition Roster would no longer be made aware of special opportunities. Programs targeted toward children from disadvantaged families would become less effective because of the increased difficulty in identifying those in need. The absence of such information would affect those least able to afford it, the economically disadvantaged.

Other examples are:

Obstructing the Department of Defense in identifying and recruiting students interested in ROTC programs.

Constraining programs that recognize academic and other achievements by young people. This would affect over 2 million talented high school students recognized annually by the National Honor Society, Who's Who Among American High School Students, and Ventures in Education.

Limiting the distribution of educational materials. H.R. 3508 would curtail programs—for example, children's book clubs and magazines—that encourage children to learn to read and love learning.

In reality, the legislation goes far beyond its purpose. It has wide-reaching, negative, and unintended consequences for many legitimate and worthy educational programs and services. Among the educational activities directly affected by this legislation are, then, in summary: recruitment of students by colleges and universities; initiatives that recognize student achievement; identification of, and outreach to, students who require financial assistance for higher education, including programs for minorities and the economically disadvantaged, and, finally, the distribution of guidance and counseling materials to those students.

For all these reasons, I urge this subcommittee to consider amendments to H.R. 3508, perhaps similar to the one offered by Congressman Franks already, that would preserve the goal of the legislation—that is, the protection of children—while permitting legitimate educational activities to continue.

In closing, I'd like to thank the subcommittee for the opportunity to express these important views of the higher education community. I would also like to thank and commend the subcommittee for accepting this daunting challenge and for understanding the legitimacy of our concerns. I'd be happy to answer any questions, along with my colleague, Brad Quin, of the College Board.

[The prepared statement of Mr. Siegel follows:]

PREPARED STATEMENT OF FREDERIC A. SIEGEL, EXECUTIVE DIRECTOR, ENROLLMENT MANAGEMENT, GEORGE WASHINGTON UNIVERSITY

Good Morning. Thank you, Mr. Chairman and members of The Subcommittee. It is an honor for me to be called before you today to give testimony regarding such an important issue.

I am Frederic Siegel, Executive Director for Enrollment Management and the Director of Admissions at The George Washington University. Before coming to The George Washington University, I was Director of Admissions at Boston University. Both The George Washington University and Boston University are members of the College Board, a national nonprofit membership association of schools, colleges and other educational organizations working to help students succeed in the transition from high school to college.

To begin with, let me be clear—I support the goal and the intent of the legislation—H.R. 3508, Children's Privacy Protection and Parental Empowerment Act of 1998 introduced by Rep. Bob Franks. Indeed, I am the father of a four year old daughter. Personally and professionally I believe that we must do everything possible to protect young people from the evil forces in our society.

I share with my colleagues in collegiate admissions offices and in high school guidance offices across the country a commitment to providing students with the information necessary to make sound educational decisions. Such decisions are essential if students are to receive the type of education that transforms them into skilled workers and informed citizens. With over 3,000 colleges and universities offering post-secondary education, almost 25,000 high schools and 2.6 million high school graduates, the process of matching students with the appropriate educational experience and encouraging them to think critically about their future is often a complicated one. I would like to tell you about how The George Washington University approaches this process.

One of the mechanisms used by The George Washington University to recruit students is the College Board's Student Search Service. The Student Search Service was established over two decades ago in an effort to increase the exchange of information between high school students and colleges and to improve the transition process from secondary to post-secondary education.

Last year over three million students taking the PSAT/NMSQT, SAT I and Advanced Placement Examinations provided detailed information about themselves and gave permission to make it available through Student Search. Students' participation in the Student Search Service is completely voluntary and they pay no fees for participating.

Our participation in the Student Search Service has enabled The George Washington University—as well as over 1200 other institutions in the country—to identify and contact a growing and diverse population of high school students. It allows us to invite highly qualified students to apply to honors programs, alert students to special programs and scholarship opportunities, send financial information to students who indicate their parents cannot meet the full cost of a college education, send materials describing individual curricula to students intending to major in those fields, attract students to campus events and send brochures that depict our university.

Both students and institutions benefit from this service. Students receive valuable information about colleges that are interested in them, about programs and services that could be helpful and about financial aid and other scholarship opportunities that will help them in pursuing a college education. Prior to a search contact, students often have had little or no information—other than anecdotal news—about these institutions. We are finding that more and more students voluntarily choose to participate in the search process earlier in their high school years as a way of helping to plan more effectively their academic futures. Colleges and universities benefit by expanding their outreach efforts to a broader geographic base and recruiting from groups that have been traditionally under-represented on their campuses.

The College Board monitors compliance with eligibility rules for each and every participant of Student Search Service. Only strictly eligible colleges, universities and consortia of colleges and universities, scholarship agencies, governmental agencies and nonprofit organizations may participate. Institutions participating in the program are required to sign an agreement ensuring that student names are used solely and exclusively to identify potential students and to bring to their attention the educational and financial aid opportunities available to them. The names may not be divulged to third parties or used to conduct market research. The agreement also ensures that students' names are used only for non-discriminatory purposes. Secondary uses of the names are not permitted. The College Board also monitors the content and substance of the messages sent to students by institutional participants as a part of its responsibility to ensure compliance. Absolutely no advertising of any sort is permitted in information sent to students by participating institutions.

Our participation in Search has enabled The George Washington University to expand enrollments, diversify our student body and attract students who can benefit from our programs. It has been vital to our growth as a center of learning here in our nation's capital.

Unfortunately, H.R. 3508 in its current fond, would jeopardize and restrict this dissemination of information by the nation's colleges and universities to potential students, particularly the mailing to students early in their high school years. By requiring the written consent of a parent or guardian for those students under the age of 16, the legislation would render the process of providing information about future educational opportunities so cumbersome as to be prohibitive. The effects on students from homes in which English is not the first language or on students from

homes in which they are first generation college going would be devastating. Colleges and universities would be limited in their ability to recruit students who are well matched to their campuses on the basis of grades, financial need, special interest/talents, race or religious background. Gifted and talented students who are eligible to participate in advanced programs at colleges and universities could not be identified and contacted about these unique opportunities.

There are other educational consequences of this legislation as well. For example,

restricting the identification of, and outreach to, students who require financial assistance for higher education. With the rising cost—and benefits—of higher education, it is imperative that children are made aware of financial assistance and scholarship opportunities as early as their freshman year in high school. Fewer students would be identified and contacted by corporations, nonprofit, civic and religious organizations with information about scholarships for which they might qualify. Students listed on the College Board's National Hispanic Recognition Roster would no longer be made aware of special opportunities. Programs targeted toward children from disadvantaged families would become less effective because of the increased difficulty in identifying those in need. The absence of such information would affect those least able to afford it—the economically disadvantaged.

Other examples are:

obstructing the Department of Defense in identifying and recruiting students interested in ROTC programs.

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limiting the distribution of educational materials. H.R. 3508 would curtail programs—for example, children's book clubs and magazines—that encourage children to learn to read and love learning.

In reality, however, the legislation goes far beyond this purpose. It has wide reaching, negative, and unintended consequences for many legitimate and worthy educational programs and services. Among the educational activities directly affected by this legislation are:

Recruitment of students by colleges and universities

Initiatives that recognize student achievement

Identification of, and outreach to, students who require financial assistance for higher education, including programs for minorities and the economically disadvantaged

Distribution of guidance and counseling materials to students

In closing, I would like to thank The Subcommittee for the opportunity to express these important views of the higher education community. I would also like to commend The Subcommittee for accepting this daunting challenge, and for understanding the legitimacy of our concertos.

For all these reasons I urge this Subcommittee to consider amendments to H.R. 3508 that would preserve the goal of the legislation—protection of children—while permitting legitimate educational activities to continue.

I would be happy to answer any questions along with my colleague, Brad Quinn, Director of Admissions and Enrollment Services at the College Board.

Mr. MCCOLLUM. Thank you very much, Mr. Siegel.

Mr. Barton, you're recognized.

STATEMENT OF RICHARD A. BARTON, SENIOR VICE PRESIDENT, CONGRESSIONAL RELATIONS, DIRECT MARKETING ASSOCIATION

Mr. BARTON. Thank you, Mr. Chairman, members of the subcommittee. It's a real pleasure to be here, I think, to testify on this important issue today.

I'm Richard Barton, and I'm senior vice president for congressional relations, Direct Marketing Association. I think I need to add to, to soften the image a little bit, my biography that I'm also a former school board member. I've also been a member of a university board, and am a father and a grandfather, and I have very great concern for children also.

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We support the goals, the stated goals, of H.R. 3508, and I think everybody here at this table does. You would have to support these goals, because we certainly in no way are in favor of any kind of system that promotes or helps pedophiles or any other people that would do harm to children.

We believe that children should receive even more protection against society's predators than perhaps they have in the past, and we certainly believe—and I think it's the history of our industry, as the witnesses here will discuss with you—that parents should have more influence over the external factors that could harm their child, and that includes the area of mailing lists and information about children.

So we support some provisions of this bill. We support the provision about prison labor, and we can discuss that later, if you'd like. We support the provisions that would make it a crime to rent, sell, or exchange lists with known pedophiles or others whom we have reason believe could or would harm a child.

But we must make this strong statement:—we feel very strongly that the rest of the bill would be highly destructive to both commercial and nonprofit interests who bring children a large array of services, both educational and commercial, and services and goods, through the techniques of direct marketing, that in many cases they would not get in any other way, and certainly in all cases in which they can get it more conveniently and more targeted to their interests through other ways of marketing.

Direct market is now a trillion dollar industry—a trillion dollar industry. It's been one of the remarkable success stories of American business and nonprofit organizations over the last 20 or 30 years. And the very foundation, the reason that this kind of marketing can exist, is the use of data bases to collect, analyze, and use information to define and reach specific audiences. It's that simple. It is not in any way a mysterious or a threatening kind of program. This is what direct marketing is, and this is what it does.

The concept of a positive opt-out would very simply destroy this whole great direct marketing concept. It would destroy it because people simply would not opt-in to a program, not because they didn't like it, but because they just wouldn't get around to do it. And we're going to have to be very frank about that, and we wouldn't take the time to give assent whether adults or children. And if you have a program in which you require—which, by the way, has constitutional implications, too—but require someone to say that you can contact me before it can be done, it would simply throw away a major, major way of doing business and providing nonprofit services in the country.

We would also like to point out that exempting—our previous witness notwithstanding, but we certainly understand what he's saying—would do no good because, if this bill passed even with exemptions in it, the lists simply wouldn't exist. There would be no reason for putting the lists together because there would not be enough of a list, I think, to make it economically feasible to maintain the list. So even if you provided exemptions from this legislation, the chances are that there wouldn't be any lists to use.

Also, I think that we do have to emphasize that we do not believe that this provision of the bill would do a single thing, as Sergeant

Tyler said, to protect a single child against any pedophile. I know that the previous witnesses said they knew we were going to say this. We'll say it again: there is no instance of known pedophiles using direct marketing lists, lists that are used to reach children and market to children, to harm a child in any way. And I don't think that you can simply discard that. The fact that that has not happened is very important, and, as a matter of fact, it is a testimony to how this industry is operated in protecting the privacy and protecting the information about children and about other people on their lists. So I think that's very important, and I think it should be an important consideration.

And I also would have to say that I think it's really unfair to ask the question: Do you want to wait for a child to die before you take any action or pass this bill? Those of us who have been in public life realize that it's an unfair question. No one wants a child to die, and we certainly would not in any way favor that, but we do think that the burden is on the proponents of this legislation to say where's the problem here in the use of direct marketing lists? There are potential problems we've heard about. We have seen aberrations of the list practices, which we abhor as well as the company that finally condemned that practice but we don't think that there's harm.

Providing an opt-in provision rather than opt-out provision really would be analogous to closing malls because there might be a chance that a child would be hurt in a mall. This is the direct marketing mall, and there are other ways we think that we can protect children, and that's what we would like to work with you all on.

We have a very time-honored and, we believe, very successful program which, in fact, does provide a measure of privacy for parents and for their children, and that is the concept of opt-out which the chairman discussed briefly before. We'd like to discuss it now.

It has been proven that it works. We have a mail preference service now which has been in existence for over 20 years and gives people the opportunity to get off of national mailing lists. We believe—and we don't know where these surveys come, but we believe that the vast majority of the members of the Direct Marketing Association, who themselves probably provide around 80 or 90 percent of all the national mailings in this country, are in fact using the mail preference service. We have 3 million names on that list and many more millions have been on the list over the last 20 years. We have a similar list for the telephone preference service. Also a very strong element of our guidelines is that companies that have information about people on their list and who intend to use it for marketing purposes should give people an opportunity to get off those lists and should notify them of what this information is going to be used for. We believe in that principle, and most of our businesses and the witnesses who will, I think, succeed me will testify to that.

Congress itself has recognized the opt-out principle in the Video Privacy Protection Act, in the Driver's License Protection Act, in legislation which governs the cable industry, and the Telephone Consumer Protection Act—all this is legislation and regulation that we've worked on.

The direct marketing industry has a long history of developing ethical principles and guidelines to govern the conduct of its members. Federal agencies, Congress, the consumer organizations with whom we work have recognized this as a valuable tool. Can it be better? Yes, it can be better, and we certainly want to work to make it better, but we believe this legislation would do very great harm to nonprofit organizations, do very great harm to a large segment of direct marketing that serves children with commercial products and would not take a great step toward protecting against pedophiles. There are other ways to do this, and we would like to discuss this with you all and the staff and other Members of Congress as time goes on.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Barton follows:]

PREPARED STATEMENT OF RICHARD A. BARTON, SENIOR VICE PRESIDENT, CONGRESSIONAL RELATIONS, DIRECT MARKETING ASSOCIATION

Mr. Chairman; Members of the Subcommittee, the members of the Direct Marketing Association appreciate the opportunity to testify today on H.R. 3508. As we will discuss further in the testimony, we fully support the principal stated goals of the legislation protecting child safety. However, we have serious concerns that this legislation does little to protect children but would do damage to the efforts of both nonprofit organizations and businesses to provide a broad array of products, services, and educational opportunities to and for children and their parents should it pass without significant modification.

DMA supports the elements of H.R. 3508 that directly address the safety concerns motivating the bill: its prohibition of use of prison labor to process information about children, and its prohibition of exchange of personal information with knowledge that the information will be used to harm a child.

However, much of the rest of H.R. 3508 will not advance child safety because direct marketing information has not and is very unlikely to be used by criminals to pose any sort of harm to children. Instead of protecting safety, H.R. 3508 would level a severe and counterproductive blow to the viability of our industry, depriving children and their parents of useful goods and services. At the same time, as Mr. Lerner and Sergeant Tyler will testify at greater length, by eliminating the source of list information for other purposes, H.R. 3508 would frustrate both educational opportunities for children and the child safety benefits of finding missing children using list information.

THE DIRECT MARKETING ASSOCIATION

Established in 1917, the Direct Marketing Association is the oldest and largest trade association for nonprofit and business organizations using direct marketing to reach their customers, members, and prospects. We represent more than 3,000 corporations and organizations in the United States as well as more than 600 corporations in 47 other nations. These include members such as Highlights for Children, Disney, Grolier (the publishers of Dr. Seuss books), March of Dimes, and Scholastic Magazine, along with financial institutions that give student loans and academic organizations that grant scholarships to financially disadvantaged youth. DMA members use all media to reach their customers and prospects—mail, telephone, television, radio, periodicals, and newspapers as well as cyberspace.

DIRECT MARKETERS MAKE SIGNIFICANT SOCIAL AND ECONOMIC CONTRIBUTIONS

A recently released three-year study, conducted for DMA by the WEFA Group, found that nearly $1.1 trillion in goods and services were purchased by American consumers and businesses through direct response (all media) in 1995. The study also found that nearly 50 separate industries substantially rely on direct marketing techniques. These include the publishing, financial services, retail, catalog, high tech, and transportation industries, among others—as well as nonprofit groups, charitable organizations, and political parties. A recent Gallup study found that 77% of American companies use direct marketing.

Businesses using direct marketing techniques, the crucial component of which is the use of data bases to identify, define, and reach audiences, are creating jobs in our economy. The WEFA study found that, in 1995, more than 19 million workers

were employed throughout the U.S. economy as a result of direct marketing activities. Forecasts for the year 2000 project that direct marketing sales and employment will outpace the growth in the U.S. economy overall as consumers and businesses rely more heavily on direct marketing to meet their needs. Direct marketing has greatly expanded the choices available to adults, and it has done the same for children—and their parents.

Literally thousands of children's products are sold through direct marketing, many of which might not be available through other marketing techniques. These include not only toys and games, but also books, magazines, videos, music, educational materials, computer software, educational and recreational programs, and much more. By criminalizing the only economically viable means of collecting and transferring bulk demographic data about children and families, H.R. 3508 would effectively end availability of marketing information for children's products, such as children's books, magazines, summer camps and health products.

However, using databases to define a specific audience is important far beyond commercial markets. For example, colleges, universities and schools use direct marketing lists to seek out students and award scholarships. The armed forces use direct marketing to recruit volunteers. Financial institutions use databases to help parents and students with educational loans. Passage of this legislation in its present form would criticize the principal means of compiling these lists and severely hamper, in many cases stop, these valuable programs.

DMA AND H.R. 3508

DMA and the sponsors of H.R. 3508 share many common goals. We believe parents need support to exercise their protective role over external forces that affect their children's lives. We agree that strong laws are necessary to protect children from pedophiles and others who would do them harm. We believe that people should be aware of how information about them might be used and have, at least in a marketing context, the ability to opt out of the use of that information.

Therefore, we support two key provisions of H.R. 3508 that would prohibit using prison inmates to process personal information about children, and to sell, rent, or exchange a list of children's names and addresses knowing that the information will be used to harm a child. These provisions may have the effect of providing some measure of protection for children.

We also agree that those owning or controlling a list should comply with the requests of parents to disclose information in the owner's possession about that child that has been transmitted to anyone else. We do, however, believe that criminalizing failure to disclose the information is unwarranted.

However, we oppose most of the remaining provisions of the bill. Among our chief concerns are the bill's:

Prohibition against collection of demographic information without written parental consent;

Other highly burdensome disclosure requirements (including requirements to track the exchange of all information about children) and to disclose, upon request of a parent, "all other information" in the possession of a list provider whose disclosure is not prohibited by law;

prohibition against use of information from games and clubs that collect birthday and other personal information of children to contact those children for other commercial purposes;

harsh prison terms and criminal fines for beneficial commercial activity; and

inviting a litigation bonanza by establishing $1,000 per plaintiff minimum bounties for large class action lawsuits against our members.

If adopted, these sweeping and harsh provisions would effectively end availability of marketing information concerning children. The result would be sharply reduced consumer choice and information in relation to products and services for children.

The adoption of these provisions would, for all intents and purposes, destroy the ability of businesses, advocacy groups, and educational institutions to define their audiences effectively. Even if some groups might be exempted from this legislation, it would be a pyrrhic victory since the lists necessary for their activities would not exist because it would not be economically feasible to maintain them. Thus, in the long run, children and parents would be the losers. H.R. 3508 would make it more difficult for both commercial and nonprofit organizations to reach them with valuable offers and information and would diminish the variety of unique and useful commercial products. H.R. 3508 would make it more difficult for educational institutions to reach out to minorities and disadvantaged groups with scholarships and educational opportunities. H.R. 3508 would make it more difficult to distribute important instructional and culturally enhancing publications, including important

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child protection information. H.R. 3508 would make it even more difficult to recruit volunteers for our armed forces.

And to little avail, if we are to take seriously, as we do, the underlying reasons for this proposed legislation. Direct marketing lists, to our knowledge, have never been used to stalk or otherwise harm children. Law enforcement agents tell us that pedophiles do not use lists to stalk children. The truth is that pedophiles and other criminals who prey upon children do so secretly, and will not risk activities such as ordering marketing lists about children that permit easy tracing by the police.

Furthermore, DMA guidelines and industry practices make it highly unlikely that marketing information would be ever used for such improper purposes. These are contained in three DMA publications: Guidelines for Ethical Business Practice, Guidelines for Personal Information Protection, and Guidelines for Mailing List Practices. Annoy other standards, these guidelines:

expressly forbid sharing list data without reviewing samples of all of the renter's intended mailings;

expressly forbid the use of marketing data for nonmarketing purposes.

These standard industry practices have effectively protected the public from misuse of data in direct marketing data bases. Organizations that fail to follow these procedures are subject to proscription by DMA, as occurred recently when a TV reporter obtained list information from one company.

This legislation would offer no substantive enhancement of privacy beyond protections that are already in place or in the process of being developed through industry initiatives and proceedings by agencies such as the Federal Trade Commission and the Federal Communications Commission.

Also, the result of legislation mandating an "opt in" principle, whether it applies only to children or to the whole universe, would be to severely inconvenience the majority of people who have no objection to being contacted with specific offers and who, in fact, often take advantage of these offers. The current industry practice of allowing individuals to "opt-out" better protects privacy without destroying much of direct marketing. This principle has been widely accepted by consumers, direct marketers, many consumer organizations, and federal and state regulatory agencies.

Even Congress, in several pieces of legislation, has endorsed the "opt out" principle. The Video Privacy Protection Act, Drivers Privacy Protection Act, the Telephone Consumer Protection Act, and legislation establishing the regulatory structure of the cable television industry all require that consumers be given the opportunity to opt out before their names and addresses can be used for marketing purposes. In each case, DMA supported this legislative approach.

SELF REGULATION—DMA'S CONSUMER PROTECTION PROGRAMS

The economic contributions of direct marketing would not be possible without the self-regulatory principles, programs, guidelines, and educational materials for both businesses and consumers developed throughout the years by DMA and strongly supported by direct marketers. This commitment to self regulation is deeply ingrained in the direct marketing industry. Creating ethical standards has been part of DMA's program since the organization's inception 79 years ago. Indeed, our codified guidelines have been in existence for more than 30 years.

We are, however, very aware that there are particular instances where regulation is appropriate, and DMA has from time to time supported strong regulation, particularly in fighting fraud. Consumer confidence and trust in the direct marketing process is essential to the success of our business.

DMA initiated its self-regulatory programs ethical business practice in 1960. Two committees, both of which have members representing a broad cross section of direct marketing, are responsible for the ongoing development and implementation of our self-regulatory programs. Our Ethics Policy Committee is responsible for the writing and periodic review of our guidelines for ethical business practice. DMA's Committee on Ethical Business Practice uses a peer review process to investigate allegations of unethical conduct, and when the allegations are considered valid, uses peer pressure to change the conduct. A large majority of the cases are resolved. When the conduct is found to violate the law, DMA works with the appropriate law enforcement agencies to end the practice.

Until recently, our highly successful self-regulatory program has been unpublicized and kept confidential. We, however, believe the time has come to make our process more public and will be producing reports three times per year to detail the numbers and types of grievances we are dealing with and the disposition of those grievances—whether that involves successfully bringing about a change in a company's practices or turning over information to law enforcement agencies in seriously egregious cases.

Following recommendations from DMA members and in response to early concerns about privacy in the collection and use of data used to develop targeted lists, DMA established the Mail Preference Service in 1971. This is a free national service enabling consumers who do not enjoy being part of the direct marketing process to delete their names and addresses from mailing lists. DMA maintains this national "do not mail" list. Major mailers and service bureaus use this list to purge those names and addresses from their national mailings. Consumers on the MPS file tell us they experience a significant decline in their mail.

Millions of Americans have used this service during the past 25 years and more than three million names and addresses are in the current file. We also use the Postal Service's National Change of Address file to follow this "do not mail" request to consumer's new addresses should they move and inform the Postal Service.

The Telephone Preference Service was established in the late 1980's and provides a similar service for consumers who wish to have their names removed from telephone lists.

Underlying these services is the principle embraced by direct marketers that companies should inform their customers of the marketing use to which they put their lists. Companies also should give consumers a clear opportunity to opt out of having their names on any of those lists. Most direct marketers use both MPS and TPS and have in-house suppression programs. Our goal, of course, is that all do. And we have an ongoing, concentrated education program to keep our members and others in direct marketing aware of the importance of these programs.

Furthermore, we have an aggressive consumer education program that keeps consumers informed about lists and the ability to opt out. We have a free consumer brochure that answers the question "How Did They Get Our Name?" along with a comprehensive public relations program that explains MPS and TPS. These programs are often described in Dear Abby and Ann Landers columns among many, many others.

DMA, CHILDREN AND CYBERSPACE

The growing use of the Internet as a marketing medium has brought with it new, and in some cases unique, concerns about privacy, particularly in the case of information about children, often supplied by children themselves. Our response to these concerns is an example of our commitment to self regulation.

DMA and its members are moving aggressively to develop new guidelines on the collection and use of information about children (and others) for marketing purposes. We believe that we share a responsibility to protect our children in a manner that nurtures children while encouraging the use of developing technology.

H.R. 3508 attempts to address one aspect of this concern by imposing criminal penalties for collecting personal information about children in a game or club and using that information for any other purpose. DMA believes that this provision wrongly prohibits an entirely harmless means of compiling information that bears absolutely no relationship to child safety. However, we are moving forward with a self-regulation initiative that we believe better addresses parental control of children's on-line experiences.

DMA is striving to maintain appropriate oversight of a child's on-line experience by 1) developing principles on the collection and use of information by marketers, 2) promoting use of available and emerging technology allowing parents to control their children's on-line access and the information their children can transmit, and 3) educating consumers and businesses on how to protect privacy in an on-line environment.

DMA has joined with the Interactive Services Association (ISA) to develop joint principles that meet consumer privacy concerns while enabling our members to use the new medium to reach current and prospective customers.

DMA and ISA are in the process of educating consumers and businesses about these principles and encourage other organizations to develop similar programs.

We believe strongly that privacy protection in a marketing environment can be achieved in cyberspace by the development and implementation of strong self-regulatory programs and the broad dissemination of information to businesses and consumers. We have participated in the FTC workshop on this issue and will continue to work to develop effective consumer and business education programs that address these concerns. Precipitous and overly reactive government regulation could be detrimental to marketers and children alike by creating a chilling effect on a medium that is now opening a whole new world of opportunity for children.

CONCLUSION

To close, we would like to emphasize that we are in agreement with the stated goals of H.R. 3508. Our problems with H.R. 3508 lie in a misguided approach to these goals. As we stated before, we have a long history of protecting the privacy of our customers and prospective customers. We believe strongly that parents should have more opportunity to control the factors that affect their children's lives. We believe that consumers who do not want their names, addresses and other personal marketing information to be used or distributed have a right to have their names deleted from such lists.

While we are convinced that this legislation is misdirected and too draconian, partly because of a misunderstanding of how direct marketing works, we are willing, as we have been in the past, to work with you and the sponsors of the legislation to craft a better response to the concerns addressed by the supporters of the legislation. We have had fruitful contact with the sponsors or this legislation in the House and Senate and are hopeful that a good middle ground can be found.

Thank you again for this opportunity to testify on H.R. 3508. We are most willing to work with the subcommittee staff to better achieve the goals of this legislation.

Mr. MCCOLLUM. Well, thank you very much, Mr. Barton.

As you all know, we do have a vote in progress now, and while we might go a couple of minutes, I don't think it's fair to you, Mr. Lerner, to let you start on this and then we run right out on you. We will take a recess until immediately after this vote is completed; we'll come back. There's just one vote that I can see notice up there. So we will be back immediately after this vote.

[Recess.]

Mr. MCCOLLUM. The Subcommittee on Crime's hearing will come to order.

When we last recessed on our hearing, we had heard from Mr. Barton and we were about to hear from Mr. Lerner and Mr. Cirilli.

Mr. Lerner, you may proceed to give us your testimony.

STATEMENT OF MARTIN LERNER, PRESIDENT, AMERICAN STUDENT LIST CO., INC.

Mr. LERNER. Thank you, Mr. Chairman and members of the subcommittee. I sincerely appreciate the opportunity to participate in this hearing and share my concerns with each and every one of you.

American Student List was founded in 1965, and since that time, this company has been compiling 12 to 15 million names every year of children, high school students and college students. We've been supplying these lists to literally thousands and thousands of companies. We work with zoos. We work with amusement parks. We work with book publishers. We work with record clubs. We work with major magazines. We work with colleges. We work with banks, so that banks can provide information to students throughout the United States with information pertaining to student loans.

There's a vast array of companies that are affected by this, and certainly we're not there to hurt anybody. You know, everybody in this audience sympathizes with Marc Klass. He's lived the dread of every parent in America. He went through that nightmare. We all sympathize with him. Whether you're pro the bill or against the bill is not an issue. The issue really is there is no link between a pedophile and direct mail, and as a father of two daughters, a grandparent of three children, I somewhat resent that link being made. Certainly, if we created an opportunity to allow somebody to abuse a child from a mailing list, I would close the door tomorrow. I'm not in this to hurt children. Just the contrary, our organization

has been involved for a number of years now with the National Center for Missing & Exploited Children. We work very close with them. We have found 31 children in the past 3 years. This is just as a result of the data base being there. If the base wasn't there, these children would not have been found, and some of the stories involving these children are quite emotional. And to destroy that possibility is just wrong, and it's not accomplishing anything.

You know, everybody gets mail every day, and if we don't like what we see in the mail, we throw it away. If a parent gets a piece of literature from a theme park, from Disney, or from a book club, and resents it, for whatever reason it might be, the worst thing that that parent has, to do is make one telephone call and that's the end of it, and that child is taken off the list and would never get another piece of literature. So that's what this whole issue is about really: whether the parent should be annoyed by getting one piece of mail. That's what it's really all about. It doesn't go much deeper than that.

There's no pedophile issue here. Certainly, we're against pedophilia, as anybody else is. There's so many different areas to attack pedophiles. We've gone through it with the other witnesses.

Direct mail has never created an issue of abuse to a child. You know, this concept of don't allow a summer school to make a mailing because there may be a pedophile working in the camp—let's close the camp. Don't leave the pedophile in the camp, if that's what the concern is. It's really—a lot of the concern here is almost irrational.

And, you know, we're working with so many good companies, and to destroy an industry that's been around since, I believe, 1920 for this just doesn't make sense. And to carve out something, to carve out and say, OK, we'll allow the National Center for Missing & Exploited Children access to the list, that's fine, but, again, the list will no longer exist if our company doesn't have the ability to go to these organizations and compile these names and market them to profitmaking companies. We certainly don't have the ability just to compile them and wait and just provide the service to the National Center for Missing Children. As much as that's such an important issue, we're a public company who just couldn't afford just to put that data base together and utilize it for that one purpose or utilize just for colleges.

And to say, well, colleges can only mail to children when they're 16 and over, that doesn't work. Colleges, first of all, mail to them—Wellsley College mails to them when they're 12 and 13 years of age. But even if they mailed to them after, we have to compile them when they're 10, 11, and 12 years of age, so that when they do become 16, we have them. It's not a matter in the direct mail business of turning on the faucet and out will come 3 or 4 million 16 and older children. It just doesn't work that way. The method of compilation requires you to start off when the children are a lot younger.

We're the largest supplier of mailing lists to the U.S. Government. They utilize it for military recruitment. For the last 25 years, direct mail is an important part of the U.S. Army. People join the Army because they want to get a career. They can't afford to go on to college for one reason or another. So they do join the

Army. Many, many of them are joining the Army because we supply each and every branch of the service approximately 3.5 million names of students every year for them to mail to. And all that goes down the tubes with this legislation.

There's so much here that is involved. We don't even think about the cost to the Government in postage that would be lost. I wouldn't even know how to figure that out, but it would be a lot of money, and we're just one of many, many list companies.

And even this legislation, if it passed, it's got nothing to do with pedophiles. The pedophiles are out there. They're walking the streets every day. They're at the schoolyards. They're in the shopping malls. They're every place. So just to pass legislation like this—let's close the malls or let's do something rationale—let's make more severe penalties for pedophiles.

Certainly, parts of the bill are very acceptable to everybody. Nobody is in favor of utilizing prison labor. We compile 12 or 13 million names every year. The data entry is done by organizations in Long Island, New York City, New Jersey, Connecticut. There are many, many organizations that take our raw data and enter it. We pay 8 or 9 cents a name. Prison labor is done at 2 or 3 cents a name. You know, that's a practice that never should have happened. It was stopped a long time ago, and I'm sure it will never happen again. You know, people do make mistakes, and we go on. We correct the mistakes.

Certainly, there's a lot of legislation that should be done to maybe clean up certain things, but this industry has been around for a long time. It's done a good job policing itself. Mistakes have been made. People are set up. Things do happen, and errors are made, you know. And, certainly, I'm not in favor of those. Every time we sell a list—and we do have 9,000 customers each year—we supply those lists. Each of our customers sends us a mailing piece. We know exactly what that customer is using it for. We have a sales staff with us that learns who their customers are, what they do.

You know, errors can happen. We don't believe we've ever had a situation in 30 years where a list went out where we didn't know who it was going for, but certainly if somebody wants to make an effort to set us up and give us the name of a phony company, or whatever have you, I guess anything could happen. But to concoct a theory that a pedophile is going to go out and buy a list is something I guess I just can't accept. I don't see why a pedophile, if he did want to do it, would want to leave a paper trail.

And the sad part about this bill, by asking for parental consent, we're almost saying to the parent, "Sign this parent consent, so we can put your name on the list. So that now it's OK. Now your child is going to get abducted." We're almost—the whole thing just doesn't make too much sense for me.

So I appreciate——

Mr. MCCOLLUM. Thank you very much.

Mr. LERNER [continuing]. I appreciate your time. Thank you.

Mr. MCCOLLUM. Thank you very much, Mr. Lerner, for your comments.

Mr. LERNER. Thank you so much.

[The prepared statement of Mr. Lerner follows:]

PREPARED STATEMENT OF MARTIN LERNER, PRESIDENT, AMERICAN STUDENT LIST CO., INC.

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to participate in this hearing and share my serious concerns about H.R. 3508.

Just a few months ago, I never would have dreamed that I would need to come to Washington to tell members of Congress why they should not deny thousands of organizations the right to provide useful information that is of great value to millions of the nation's young people and their families. This legislation would severely limit perhaps the most cost-effective way of sharing information with families—information mailed directly to the home.

As I have talked with my customers and the many other organizations that would be hurt by this draconian legislation, I have continually been met with shock and disbelief. Everyone who depends upon, or knows about, direct mail finds it hard to believe that Congress would even consider dramatically limiting communications to families and young people.

My customers alone include colleges and trade and vocational schools, the U.S. Armed Forces, publishers of children's magazines and books that help children learn to read, financial institutions who provide information about college financial aid opportunities and other financial services families need, groups that provide scholarships for young people, organizations that run camps and zoos that we all know children love, and companies that market consumer products for young people, such as toys and clothing.

I think you can understand why my customers and so many others who provide similar services to families find it so hard to believe that Congress would consider them a threat to children. Clearly, the reason for the existence of these services—the reason they are in business or exist as a nonprofit institution—is because children and families value them. If their services and products were not in demand by the public, they would no longer exist—whether they are a for-profit company, a nonprofit institution like a college, or the military.

Likewise, these organizations care deeply about young people. There should be no doubt about that. Their mission is to make life better for children, open doors of opportunity, help them be better students, and simply enjoy the wonders of life. These are not sinister undertakings. Far from that. What we do is of great benefit to parents and children.

Briefly stated, the legislation you are considering does not do what it purports to do—help protect children. In fact, it will do the opposite by denying them access to information that they need and want. In this testimony, I hope to explain to you the detrimental impact this legislation would have and give you greater insight into how the current system of communicating with families works. I will also outline what I firmly believe are the most significant flaws in this bill.

AMERICAN STUDENT LIST

First, let me tell you a little bit about American Student List Company (ASL). I founded ASL 31 years ago. Over the last three decades, we have become a leading provider of mailing lists of young people, children from two years of age through post-graduate school. Today, we provide services to more than 9,000 active clients in the United States. These customers run the gamut of nonprofit organizations and companies.

A look at the services we perform should make it clear that our organization could not be more interested in the welfare of children. If there were a bill that could stamp out pedophilia, we would be the first to support it. But we are firmly convinced that this bill would do more to harm children than help them.

ASL would never put the health, safety, and well-being of the people our customers serve at risk. In fact, we never sell a list to a stranger off the street and we know our customers very well. We ensure that our clients provide appropriate and useful information that serves families. We check and review what they intend to mail ahead of time. And we use decoy names to confirm that they are using the list appropriately and mailing what we have reviewed.

What people often fail to understand is that our company, like others in our industry, depends upon its reputation. People know that ASL cares about children. Over three decades, we have built a solid reputation among the many organizations who help us compile lists of children. They trust us and they know, we would never allow our lists to be used in a harmful or disreputable way.

Another misperception we would like to put to rest is that organizations mail to families harass them or invade their privacy. Nothing could be further from the truth. Think about it. Organizations do not want to mail to people who are not po-

tential customers, students, or military recruits. It is a waste of money and they, too, cherish their good names and reputations.

At ASL, we also willingly comply with requests by parents to take their children's name off a list. These requests are exceedingly rare. Instead, if a parent calls us about a mailing, far more often they ask to be left on our lists, because they want to learn about opportunities from future mailings our clients may send. They recognize the value.

HELPING CHILDREN

No law enforcement sources have ever suggested that pedophiles use our lists. That is simply not the way these criminals operate. Experts are very skeptical that any pedophile would ever try to use our lists. There has never been a single case of such misuse of lists in more than 80 years of direct mail of a mailing list being used to harm a child. It is too indirect, expensive and unwieldy for a pedophile to choose a victim from a list of names rather than from a playground. And they desperately want to avoid leaving a paper trail.

In fact, the greatest irony of this legislation is that just the opposite is true: lists are used to help children. For nearly three years, ASL has worked closely with the National Center for Missing & Exploited Children. Our database is a vitally important tool for helping the Center, working with local law enforcement officials in locating missing, abused and abducted children. In less than three years, our work with the National Center for Missing & Exploited Children has located at least 31 children. (Many more may have been located, but we only know of the ones local law enforcement agencies tell us about.)

Let me be clear. If the bill you are considering is adopted, we would no longer be able to provide this service. And the National Center for Missing & Exploited Children—and the law enforcement agencies with whom they work—would lose this important tool. It clearly would be an outrageous tragedy if, in the name of preventing a hypothetical threat to children, we destroyed a real method that has proven successful in helping dozens of children who were abused, abducted, or lost.

SERVICES AVAILABLE TO CHILDREN FROM LISTS

We believe that the committee would have a better appreciation of the potential harm this bill would inflict on children if it understood the vacuum that would be created if it passed.

One of the most important is college recruitment. The nation's 3,200 public and private colleges engage in spirited competition to recruit students to their campuses. These schools recruit students based on demographics, academic achievement, special talents and interests, financial background and religious affiliation—information that is difficult and expensive to compile. Gifted and talented students who are eligible for special preparatory programs, many of them beginning in grammar and middle schools, also are contacted through lists.

Without the compilation of the lists, these students probably would not be aware of the wide variety of scholarships and financial aid instruments available to them. Colleges, banks, special interest organizations, social groups and religious institutions all use lists to contact children about important scholarship and financial aid programs. While these lists promote the interests of organizations that benefit children, they more importantly directly help tens of thousands of children achieve their educational and developmental goals. Among the wide range of institutions that use lists for these purposes are the National Merit Scholarship Program, The College Board, the National Hispanic Scholar Recognition Program, and many others.

The National Research Center for College and University Admissions (NRCCUA) is one of the most important providers of lists for college recruiting. A nonprofit organization, it was initially founded to serve the unique needs of the many smaller, private liberal arts colleges in the Midwest. Today, it serves more than 800 colleges and universities nationwide, as well as the Department of Defense.

While one might not think about the armed services when talking about lists, all the branches of the U.S. military use these lists to recruit young Americans to serve our nation. These recruitment programs offer students educational and career opportunities, as well as financial aid. Many students would be unable to attend colleges without the ROTC scholarship program. Students who enter the armed forces through ROTC not only serve their country well, but also learn valuable career skills that put them on a productive earning track after completing their tour of duty. Direct mail is the armed forces' most cost-effective recruiting tool.

Lists are necessary to the work of hundreds of programs that recognize student achievement and academic excellence. These programs build pride, self-esteem and serve as inspirational motivational tools to increase student academic performance

and build healthy values. For example, more than 2 million high school students are recognized each year by the National Honor Society and Who's Who Among American High School Students. These organizations give away more than $500,000 in college scholarships. The programs also are used by colleges, universities and proprietary schools to locate prospective students. Teen pageants also recruit contestants almost exclusively from lists, often targeting pre-teens as prospects.

Many consumer goods specifically designed for children are made available to the nation's youth through these lists. These include books sold through book clubs, day care services, child-safety products, youth membership organizations, social clubs and religious groups. Many of these outfits are well known to the committee. They include Disney's Book Club, Dr. Seuss Book Club, Highlights Magazine, Scholastic Books, the New Book of Knowledge Encyclopedia, Boy Scouts of America, Girl Scouts of America, YMCA, YWCA, the American Girl historical doll series, Teen Magazine, Sports Illustrated for Kids and others.

WHY H.R. 3508 WOULD BE SO DAMAGING

H.R. 3508 would make it prohibitively expensive and impractical for many nonprofit and for-profit organizations to obtain the information necessary to perform all the valuable services noted above. The net effect of this bill would be to shrink lists used for all purposes. Ultimately, these lists would either disappear, or become so small that they would lose their effectiveness and make the process of compiling them a non-sustainable enterprise.

Three provisions in the bill would be responsible for the collapse of this important service industry: the parental consent requirement, the age 16 cutoff, and the single use clause.

The parental consent requirement says that it would be a criminal offense to knowingly sell, purchase or receive remuneration for providing children's names and addresses without the consent of the parents or guardians of the children. At first glance, the parental consent requirement seems reasonable. Parents and guardians are, after all, the ultimate guarantors of the children's health and safety. The underlying flaw in this logic, however, is that much of the information that targets children through these lists actually reaches the parents or guardians of these children, not the children themselves. Information about infant feeding formula, prenatal care, diaper and day care services is obviously not intended for child readers. Nor do children usually learn about child-safety products, children's books, financial aid or college recruitment without the information first reaching their families. The ultimate recipients of virtually all of these mailings are the parents or guardians.

It is also important to understand that the information that appears on these lists comes from organizations that have the interests of children in mind. The fact of the matter is that many lists originate in schools, which most of us entrust—and are legally entitled—to make judgments daily about the welfare of our children.

As a practical matter, requiring schools and list compilers to first obtain a parental permission slip would be an extremely expensive and time-consuming operation. Years of experience and common sense suggest that when you ask an individual to take an affirmative step to opt into something, usually the individual does nothing, either because of time, inertia or skepticism. If school administrators and teachers had to chase after parents for permission to supply their children's names to reputable companies, we know the willingness of schools to supply this information would disappear. The same would apply to any other organization that helps the industry compile lists.

As a result, the information sources for responsible list compilers would quickly dry up. Those who have existing data would find it too costly and time consuming to update the lists. The consequence is that all children—the disadvantaged and the non-disadvantaged alike—would be deprived of important information about education, financial aid, children's products and social organizations.

The bill's parental consent provision applies to children under age 16. The cutoff age strikes us as being arbitrary. Even worse, it ignores the fact that even college recruiting begins earlier.

The cutoff also does not acknowledge that it takes years to develop reliable lists. They do not magically appear when kids turn 16. If list compilers were prevented from gathering information on children below age 16, then the chances are very good that most lists for 16-year olds would be very incomplete. The military, which doesn't mail until young people are between 16 and 17 years old, would be severely hampered by this legislation.

Many academic recognition, college and scholarship recruiting programs begin many years before students are ready to enter college. Johns Hopkins University,

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for example, recruits gifted children as young as 11 to take SAT exams, which will qualify them for admission to certain college preparatory courses.

In addition, the numerous children's book clubs and magazines would lose their ability to reach children and families. Some could no longer publish. How can anyone say they're serious about education and ensuring that children learn to love reading, yet want to prohibit families from getting Dr. Suess, Highlights, and other outstanding publications? We should be encouraging reading—not putting up barriers to books and magazines entering American homes.

Likewise, I cannot imagine what harm there can be to provide families with children with information about zoos, museums, and other enriching activities that often focus their marketing efforts on elementary school children. All would be left in the dark if the age 16 cutoff were implemented.

THE UNDERLYING RATIONALE OF H.R. 3508 IS FLAWED

I have outlined the uses of lists and the damage H.R. 3508 would do to children, families, and thousands of organizations. ASL shares the committee's interest in protecting the safety of children. With all respect, however, we believe that the approach of the bill is wrong.

Again, we know of no instance where mailing lists such as those compiled by us have been used by pedophiles to inflict harm on children.

It should be noted that everything we know about sexual abuse of children suggests that Congress would be well advised to look elsewhere for a solution to this terrible problem. Over the years, research has consistently shown that most of the harm inflicted on children unfortunately is carried out by either family or people known to the victims, not by strangers who would need to use mail lists to locate their victims. The Department of Justice and independent researchers have arrived at these conclusions after interviewing the victims and the perpetrators of these crimes.

The research also is replete with examples of the methods used by the perpetrators. In none of the research have we seen a single mention of child mailing lists as a method—or potential method—for contacting or stalking potential victims.

I also urge the Subcommittee to consider the staggering economic impact this legislation would have. As written, the bill would wipe out many legitimate and decades-old companies like mine and inflict serious damage. Think of the lost revenues of the U.S. Postal Service, as well as printing and mail houses. To put such a dent in the economy without more evidence that direct mail is endangering the safety of our children would be irresponsible.

But the economic costs go far beyond the Post Office and printers. Colleges and other nonprofits would face higher costs, or lose students and the tuition revenues upon which they depend. Fewer scholarships would be available and fewer children and families would know about student aid opportunities. The economic cost of this federal mandate would be enormous.

But, importantly, we do not believe that the mechanisms suggested by the bill will add much to the privacy provisions already protecting children and adults in the direct marketing industry. This is an industry that on its own has taken affirmative steps to protect the privacy of individuals. The industry has a peer review program that investigates all allegations of unethical conduct, and, when necessary, refers criminal behavior to law enforcement officials.

Because of initiatives undertaken on our own, consumers can take advantage of services to remove their names from marketing lists. A free national service has been available since 1971 to help consumers remove their names from mailing lists. More than 3 million consumers are currently taking advantage of this service. A similar service exists for telephone solicitation.

Personally, I would strongly support enlarging this program to make it even easier for people to get off lists. An 800 phone number, for example, could be instituted for people to call to have their names removed.

We fully understand that some unscrupulous operators are engaged in direct marketing efforts. But we believe that these operators can be flushed out through our own efforts, supplemented by the enforcement capabilities of the Federal Trade Commission and the Federal Communications Commission, who closely monitor our industry.

I would welcome the opportunity to work with others in the industry, the users of lists, members of Congress, child advocates, and organizations like the National Center for Missing & Exploited Children to ensure that our lists do not fall into the wrong hands. I would even support writing certain measures that are now industry standards into law if needed.

In conclusion, we share your concern about the crimes committed against our nation's youth, but we do not see the need for this legislation. We do not believe it will protect children against the abuses that worry us all. Instead, we feel it will do just the opposite. Law enforcement will no longer be able to use our lists to locate abused and missing children. Colleges, universities and proprietary schools will have difficulty informing students of scholarship opportunities. Enrichment programs for children will cease. Armed Forces recruiting programs will suffer.

Mr. MCCOLLUM. Mr. Cirilli, you're recognized.

STATEMENT OF DANTE CIRILLI, PRESIDENT, GROLIER ENTERPRISES, INC.

Mr. CIRILLI. OK. I want to thank you for the opportunity to take part in this hearing. I would like to briefly explain how I came to testify.

I was concerned about the effect the bill will have on our company, and my Congressman, Gary Franks, suggested—and even encouraged me—to testify. I did not plan to testify. I have never done this before, and I would like to submit a written presentation for the record, possibly next week.

Mr. MCCOLLUM. Certainly. Without objection, it will be admitted when you submit it, sir.

Mr. CIRILLI. Thank you.

I also would like to make it clear that Grolier wholeheartedly supports any bill whose purpose is to prevent children's exposure to sex predators, but we are concerned about the unintended effects of this particular bill.

As a company, Grolier has a vision. Grolier's been in business for over 100 years. And as a company, Grolier has a vision to be the direct mail company that parents turn to first for programs and services that support the learning and development of their children and the family. Our competitors include companies such as Highlights for Children, Reader's Digest, Scholastics, the Children's Book of the Month Club, Troll, and Time/Life Children's Books.

What is Grolier? Grolier is one of the largest mail order distributor of children's books in the world. Grolier is also—Grolier focuses on low-priced, high-volume mail order book clubs. We sell over 50 million books a year through the mail. Our programs include the beginner reader's program, you know, "The Cat in the Hat." "The Cat in the Hat" and the beginner reader's program in retail sells for $7.95; we sell them for $4.99.

Our introductory offer—generally, when you join our club, you get eight books for the price of one. So each book is sold for 24 cents, if you look at it that way, and even after you finish your commitment and stay in the club, and including postage, you're really buying these books for slightly more than $3 a book versus $7.95 in retail. So it is a great way for a family to economically introduce the children to reading.

Our other programs include the Disney reading program, the Muppet Book Club, and the Book of Knowledge, a children's encyclopedia, and, also, we even have a program called the Black American of Achievement Book Club, which focuses on biographies of successful black Americans. OK?

The average Grolier customer has a total earnings of $40,300. Fifty-three percent of them are dual-income earners. We do not have wealthy customers. These are two incomes earning $40,000.

This is—we often say ours is KMart customer or a Wal-Mart customer. That's our biggest competitor.

They have 3.6 people in the family. Sixty-five percent of them own a home, and the average age of our customer is 3½ years old. So the 14-year-old cutoff wouldn't cut for us, you know.

Grolier has been helping parents teach good reading habits and early love of reading for more than 36 years. Grolier's proud to have enrolled 36 million children in our two main clubs, the Disney and the beginner reader's program—in the history of our club, 36 million children—and has 20 other children's book clubs that depend on various information about age and gender.

Our strategy is to really organize our products by age. So as the children grow older, we have—you know, you can't introduce math too early or you can't introduce this too early. So this is what we have. This is our strategy.

And I've been there for all 36 years and all 36 million members, and I know that there is no relationship between a pedophile and children's lists. I have never come across anything that anything came anything near like that. The reverse is true; we've been called upon by law enforcement agencies to possibly find order forms, so that the law enforcement agency could look at the handwriting analysis of a particular order form here and there.

Grolier has a three-part strategy to offer children's books, and they are: one, we want to offer variety in age from zero to 12 years of age. We want to offer variety in content. We have alphabet series. We have number series. We have children's book series on values, nature, Bible, science, American history, and even, again, the children's encyclopedia. Many of these series are exclusive to Grolier, and they're not available in any retail market. You don't go into Barnes & Nobles and buy sets of books; you buy individual books. We offer that outlet for a customer who wants to get a collection of a book, and we also offer variety in form. We offer book clubs, video clubs. We offer card clubs, summer skills kits, and recently a CD–ROM club.

How will this bill affect Grolier? This would affect Grolier's ability to secure names of potential customers. If a broker was required to obtain parental consent, the number of children's names would truly be drastically reduced. The new birth list is our most effective list. Asking a new mother to consent just won't work.

And what happens when the names—when there are less names coming into us, it raises our costs. No. 1, we will have a new cost to secure parental consent. That's an entirely new cost. No. 2, it affects our whole impact on our economy of scale, the way we—these are low-priced books, and we need volume to manufacture them cheap. Therefore, if I don't have the volume, I get less postal discount from the post office. There's no educational rates anymore that we used to have years ago.

Higher paper costs because I have less volume; higher marketing costs, they make it impossible—they may make it impossible to market these programs. We depend on low-cost data collection and knowing the customers' needs.

We recommend that the bill, 3508, as it is presented, not be enacted. It's detrimental to young families with low income. It's detrimental to children. They love to receive books in the mail. It's

detrimental to young families in the rural markets. They don't have access to Barnes & Nobles and Borders and things like that. It's detrimental to the concept of parent involvement, to teach young children reading. It's detrimental to the goal of having every American child learn to read by third grade.

The bill in its present form will not stop pedophiles from renting a list. Now the pedophile will be able to rent a list with a list of parent-approved children. That's simply all you'll wind up doing, when you look at the way this bill is written.

I suggest that we give us and other publishing companies six months to work out with you and your staff some other recommended approach that would minimize the adverse effect on legitimate publishing companies. The bill, the new bill, should focus on possibly codifying procedures that companies follow when renting a list, have a sample of a mailing, have a tax ID number. It should focus on accurate and easily available tracing capabilities. How was the name used? Who bought it? And it should focus on the possibility, and someone suggested a list of—FBI keeps a list of pedophiles, and possibly they should be prevented from any mailing access, not only in rental, but even—I wouldn't even want to mail to a person like that.

And, lastly, it will focus on the elimination of gathering of information or use of prison labor for gathering information.

Thank you.

Mr. MCCOLLUM. Well, thank you very much, Mr. Cirilli, and I want to comment that your last suggestion about proposing some legislation—and you did do some just then—that might be more acceptable to the industry, but still serve a useful purpose in helping restrict information from those who shouldn't be getting it—is a very well-received suggestion, and I would hope that we could work with you and others in the industry.

Mr. CIRILLI. OK.

Mr. MCCOLLUM. We are not—just a comment to all of you, and I think the first panel knew this, too—we are not in the time constraints that we have left in this session of Congress going to produce a bill as a result of this hearing in this 2 or 3 weeks. There was not an intent—Mr. Franks knew that. I think Mr. Klass knows that. We, however, are aware of this issue and wanted to explore it. In the next Congress it certainly would be something which, if we could find an appropriate type of legislative product, would be something we'd want to look at, but it may not be this product, and that's why we're having these hearings.

I want to recognize myself for 5 minutes, and then I'll recognize Mr. Schumer to ask some questions.

One of the questions that Sergeant Tyler, you, and perhaps Mr. Lerner, or others, could comment on concerns a nagging doubt I have about the assertion that both of you made more emphatically than anyone else: that these mailing lists just are of absolutely no use to a pedophile. You wouldn't ever come up with that. It strikes me that there are a couple of occasions, just theoretically—I know there's no case of this; at least that seems to be the case—one could assume that if a pedophile were trying to find the location of a particular child he had identified, but maybe didn't know where they lived, that the access to that list might be of use to him, assuming

that he couldn't get it more easily through the phone book. And I realize that's somewhat of a stretch because one could argue that there might be an easier way to do that: follow the child; do whatever else.

And I think, Sergeant, you were the one making the point, if I'm not mistaken, that in your work with pedophile cases and criminal cases involving children, that almost always the criminal wants to see or does see physically the child that he or she's going after, so to speak, before they actually become interested in a child. They don't just randomly go through the phone book or the children's directory, or whatever, and pick out, "Aha, here's a 12-year-old. Here's my list of 12-year-olds. I'm going to go inspect them today."

Am I not right, though, that this has some possibility, that a list could provide an address that might not otherwise be available?

Sergeant TYLER. I think the answer to that has to be yes. I would never rule out any way for a pedophile—or a better term actually would be child sex predator—to gain access and information on a child. But it's important to realize that they are visually-focused. I guess a way to understand that would be I happen to be a heterosexual. I know what my sexual preference is. But if you were to say, OK, I like a 41-year-old, brown-haired, green-eyed women, that doesn't mean I'm going to be sexually interested in every 41-year-old, green-eyed woman that walks down the hallway. It does mean that I'm very interested and much in love with my wife, who matches that description.

Mr. MCCOLLUM. Right. [Laughter.]

Sergeant TYLER. So to have a generic description doesn't tell you anything. These lists—typically, the list I've seen, the data I've had access to, give you even less data than that information I just gave you. They will give you typically an age and a gender. But to identify a child through a list, yes, absolutely it's possible, but there are so many other ways that are so much easier to do it, and that we know have been done.

There was mention of eliminating the list to be compared to closing the doors of our malls. I would suggest to you that probably every major mall in this country has at least one, if not multiple, incidents of child sexual abuse every year.

Mr. MCCOLLUM. I'm sure that's true.

Sergeant TYLER. I mean, every mall I'm familiar with does.

Mr. MCCOLLUM. I'm sure that's true, and I think your point's well made. I think you expressed it very well.

If you wish to comment, Mr. Lerner, please do.

Mr. LERNER. Yes, there's another little point with that. Let's just look at a high school yearbook or a junior high school yearbook. That has pictures of children, and anybody——

Mr. MCCOLLUM. But it doesn't have the address.

Mr. LERNER. Well, once you have the name, you know the city, you know where the student attends school, then it's a simple matter. "Oh, I like that girl. Let me open up a phone book, and now I know her address."

Mr. MCCOLLUM. Well——

Mr. LERNER. I know her last name. Of course, unless it's Smith or——

Mr. MCCOLLUM. Well, maybe. Now if it's Smith—I'll tell you, yes, your argument is generally a good argument, Mr. Lerner. I think the remoteness of this, the less likelihood of this, has certainly been made clear to the committee than other ways of going about this, but it doesn't mean that a smart, intriguing sexual predator, child sexual predator, as Sergeant Tyler aptly refers to this character, wouldn't go after this as a source of information as far as the address. But the point's made.

Let me ask another question. With regard, Mr. Barton, in particular, to the suggestion—and maybe, Mr. Lerner, you and Mr. Barton both would be appropriate to answer this—the suggestion I made in the earlier panel discussion about having a requirement on every mail list company to take children's names and send to the parents of Susie Whatever before you ever sell that list to anybody with that name on it or sell that name on a list, saying, you know, "We want to market your child's name" because Mr. Cirilli's company wants to send them Dr. Seuss books or Disney—I know you'd package it nicely, and that was, I think, what Mr. Klass was saying. He's a little worried about how you'd package it.

But assuming that there was a requirement that you had to get not necessarily consent, but at least notice, from every parent that they had the right to reject this, that you had to send out a notice to them and inform them that you had this, you intended to market it, and if you don't want your child's name marketed, then send back in the coupon that's attached.

Now the panel, the previous panel, thought that was not a very effective thing to achieve their goal, but what I'm curious about is, to what degree would that be onerous and disruptive? Obviously, it's going to be an additional cost on your business. It's a one-time cost. I don't know if it would serve a useful purpose, but it certainly serves the right of privacy purpose to a greater extent. It might or might not get at the sexual predator question because of the issue that's been raised about how many actually use the list anyway.

But how does the business react to that kind of a requirement? Do you or Mr. Lerner, either one, want to comment on that?

Mr. BARTON. Yes, I would be glad to comment on it. One of the underlying principles of direct marketing is the principle that companies should give notice to their customers that their names are on lists, that the names will be used for marketing purposes, and they have an option to get off the list.

Mr. MCCOLLUM. But do they do that?

Mr. BARTON. Oh, yes. If you pick up, for example, just an easy thing to do—I think I have it right here—an L.L. Bean catalog, they will have it right in the catalog that we do do this and give a chance to get off——

Mr. MCCOLLUM. But what about the idea of the direct marketing list company, the list company itself that compiles these lists, having to send that notice out, that they have the list, and if you want it off of the list, so that you can't send that to L.L. Bean or sell it to L.L. Bean unless you've got that approval, or you can't sell it to Mr. Cirilli's company unless you've first gotten the approval from the parent—and in this case, I'm suggesting, instead of approval, which is what Mr. Franks is suggesting, the converse,

which is you've got to have sent a notice that says, "OK, we've got your kid's name," in essence, however you're going to phrase it—you wouldn't quite do it that way—"and we want to sell the list; we're in this business, and these are the type of organizations we'd be selling the list to. If you have a problem with it, you don't want us to sell, you don't want your child's name on our list, then send back in the coupon." If not, you're going to get some mailings from Dr. Seuss or whomever.

Mr. BARTON. I think, without answering the question specifically, we do believe in the principle. We believe they ought to be contacted. I would have to really analyze this, whether it is the actual list broker or list holder that is the best vehicle for this or whether it is, say, the company that is selling the product or doing the actual solicitation, is the best way to do this. I think that the list people can talk to you about it. It is not something, certainly, that we would reject out of hand, because we believe in the principle. Whether it should be the actual American Student List or the people who use the list is another thing.

Mr. MCCOLLUM. Well, Mr. Lerner, do you want to comment on it?

Mr. LERNER. Yes. I think economically, businesswise, it just doesn't work. You know, this is a penny business, you might say, even though it's a trillion dollar business. A name, when a company like ours gets a name, it may cost us 8 or 9 cents to computerize the name. We may sell it a half a dozen times at 6 or 7 cents and get back maybe 40 cents for that name, ultimately, 50 cents. If we had to spend an additional cost to send a letter and put a postage stamp on the letter, economically, it just doesn't work. The cost of that letter to the parent just makes it economically not feasible.

And just think about the parent; there's probably hundreds of companies like ours out there. Every day that parent is going to get another letter from another company. That's more annoying than anything. Every day they're going to get a letter saying, "Do you want to get your child—if you want to get your child taken off the list, send this back."

Mr. MCCOLLUM. I'm going to turn it over to Mr. Schumer, but, out of curiosity, do either of you know how many mail broker list companies there are that would be involved in children? Any estimate even?

Mr. BARTON. No. There are tens of thousands of companies that do it, and I don't really know how many. One of our experts is back here, and she said she doesn't know exactly.

Mr. MCCOLLUM. OK.

Mr. Schumer, you're recognized.

Mr. SCHUMER. Well, thank you, Mr. Chairman. I want to thank all of the witnesses, both on the first panel and this one, for being here, and you for holding the hearing.

First, let me say that I certainly am in agreement with the people on the first panel, Mr. Klass, who I've worked with on gun issues and so many others, that we don't do enough about child molestation, pedophilia, et cetera. One of the things that's become clear to me, as head of the committee, is that if there was ever a crime where there was recidivism, this is it. In other words, I've

seen too many cases—and rape as well, sexual abuse of not just children, but of grown women, too. If there's ever a crime where you see over and over again people are in jail 10 years, 15 years, and then they're let out, and within three weeks they're back doing the same thing, this is it. And that's why I supported the Megan's law concept. That's why I support really long sentences with tough limitations on parole, and in most cases no parole at all on these kinds of things.

My question, I guess, is: Is this bill going to solve a problem? That's the question here. And the second question: is there an easier way to skin this cat, a better way to skin this cat? Because it does seem logical to me, from my knowledge of pedophilia, that a list isn't what turns these people on; it's seeing somebody. They would not get a list from a school yearbook; they'd probably go to the school and just hang out outside or at another place where children are. And so that's the question.

And I guess—I wish I had been here for the first panel; I couldn't be here, but let me ask Sergeant Tyler: Do we have any known documented cases where somebody used one of these lists and then committed one of these dastardly acts?

Sergeant TYLER. No, we have not any list—or, I'm sorry, not a single case have I been able to identify in my efforts to identify such a list.

You mentioned—and it was mentioned earlier as well—using year books, and I've actually had several cases where individuals, sexual predators, have identified children who were walking home from school as this is someone I want to become better acquainted with. In some cases they followed them home. Then they go to the schools and they will represent to the schools, "my niece," "my daughter," "my estranged wife went to school here. She wants me to buy the yearbook." He buys the yearbook. Then he can identify the child by name. Then when he sees the child and wants to actually make contact, he has a name; he can address her; he already knows where she lives.

Mr. SCHUMER. Would this bill knock out yearbooks? I don't—no, just lists. OK. Yes, well, we live in strange times. I have two daughters, 12 and 7. They live in New York City, where I live. They go to public school. We have code words for them. In other words, I never thought I'd live to see the day where I'd have to teach my daughters code words, so they'd be OK. But, again, if I had to list the 20 things that I'm most afraid of in terms of what would happen to my daughters or the situations where they might be in trouble, I don't think it would be that their name is on some kind of list, off the top of my head.

I got a letter here—I'd ask unanimous consent we put this in the record—from the Center for Democracy and Technology, which is talking about problems. I don't know if these are real or not. I'd like somebody to address them—if this would create Internet freedom problems, which we run into in this Congress regularly. I am not one who believes in complete freedom for the Internet. I don't believe in complete freedom for any amendment—first, second, third, fourth, fifth, and down the line, but there are problems here. Would anyone want to comment on the interference this might have on the Internet?

[The information follows:]

CENTER FOR DEMOCRACY TECHNOLOGY

September 11, 1996

Members of the Crime Subcommittee of the House Judiciary Committee and Interested Parties

The Center for Democracy and Technology urges the Crime Subcommittee to cast a critical eye on the "Children's Privacy Protection and Parental Empowerment Act" (CPPPEA) (HR 3508). While we commend the bill's sponsor, Representative Franks, and Chairman McCollum, as well as the members of the Committee for their efforts to protect children's privacy, we believe that the solutions proposed in the CPPPEA -- particularly as they relate to the exchange of information on the Internet -- will increase the collection of information about children in certain circumstances and criminalize behavior in a vast array of unintended situations, thereby compromising the free flow of information online.

CDT is committed to advancing individual privacy on the Internet. We believe that protecting children's privacy is a subject in need of exploration and action, however we urge the Committee to seek solutions that both protect privacy and respect our First Amendment freedoms.

As stated by CDT, Voters Telecommunications Watch, People for the American Way, and the Electronic Frontier Foundation in a June 1996 letter to Representative Franks (attached), the CPPPEA raises a number of significant privacy and First Amendment concerns.

- Compliance with the bill could well lead to an increase in the collection of information about children and adults, compounding privacy risks. Information providers on the Internet currently have no way of distinguishing children from adults. Given marketers and other information providers desire to continue their business, it is likely that they will seek to collect more intrusive information about children's ages and their parents in an effort to limit their liability and garner parental consent. In the worst case scenario this could lead to an unacceptably intrusive national ID system for the Internet (a system that none of us support).

- The term "list broker," is drafted to cover any entity which exchanges personal information in the course of its operation. The vast majority of World Wide Web site operators, as well as anyone who operates a listserv, mailing list or other information distribution mechanism, all collect, store, and may well exchange, email addresses. Unless Web site operators obtain parental consent before collecting information, they risk criminal penalties for violation of section (a)(4).

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- The requirement to disclose the source and content of personal information about children to parents creates unclear new obligations on Internet information providers. In fact, many of the information providers who would be covered by the CPPPEA do not keep track of the source of their information and thus may not have the ability to comply with the statute. Compliance with this section could well lead to an increase in the overall collection of personal information about Internet users, thereby compounding privacy risks.

- Requiring parental consent in all instances and requiring providers to disclose information to parents collected from children fails to acknowledge the distinction between young children and teenagers and their rights under the Constitution. Such a provision as applied to a fourteen or fifteen year old child may fail to respect the youth's independent First Amendment and privacy interests.

- Imposed identification procedures applied to the World Wide Web under the threat of criminal penalties would limit all Internet users' ability to read, speak, receive information and interact online under constitutionally-protected conditions of anonymity.

- Section (a)(6) which criminalizes any distribution or receipt of personal information where the receiver has knowledge or "reason to believe that the information will be used to abuse the child or physically harm the child" is well-intentioned, but potentially so broad as to cover anyone who receives and discloses personal information about a child, or on the Internet anyone who allows a child to "post" information about his or herself. The bill establishes no clear standard of care or level of knowledge necessary to meet this requirement, leaving everyone on the Internet in doubt about whether or not they may be violating this new crime. Schools and organizations who publish directories as well as newspapers who publish the identity of a child in a news story could be subject to prosecution because they had "reason to know" that the information may end up in the possession of bad actors.

The Internet offers children unprecedented and important new educational and recreational opportunities. But, the medium also may offer access to inappropriate material, and exposure to unfair marketing or information collection practices. Solutions to these problems must be carefully analyzed and should take into account both the unique nature of the Internet, as well as the multitude of First Amendment and privacy rights at stake for all who seek to read, communicate, and associate with others in the online environment.

Given the importance of addressing children's privacy issues, we suggest that the Committee examine alternatives. Empowering parents to protect their children's privacy with existing technological tools, fair information practices by the industry, and the enactment of more narrowly tailored legislation, will help ensure that the Internet continues to grow and thrive for both commercial and noncommercial endeavors. For example, software already on the market such as Cyberpatrol, as well as industry-standard technologies such as the Platform for Internet Content Selection (PICS) enable

people -- including parents and their children -- to restrict access to sites which practice objectionable marketing and information collection techniques.

At present, PICS technology, along with other innovative products, allows parents to filter and block-out materials that contain objectionable content or block access to sites with inappropriate or abusive marketing practices. Current technology can enable parents to:

- prevent their children from accessing Web sites with inappropriate information practices -- as defined by the parent or a consumer or privacy organization of the parent's choice;
- prevent their children from revealing personal information such as name, address, and e-mail address to others;
- install security measures such as passwords that prevent their child from changing rules about Web site access or information disclosure, collection and use that the parent has established.

CDT strongly believes that parents should be given the tools and legal remedies necessary to ensure a safe, educational, and enjoyable online experience for their children. It is possible to craft a policy that will ensure children's safety and protect children's privacy, consistent with the First Amendment. We urge the Committee to seek a policy that will protect the privacy of users of the Internet, foster free speech, and continue the Internet's development as a robust platform for social, political and economic activities.

Sincerely,

Jerry Berman
Executive Director

Mr. LERNER. I would agree with you, Congressman, that I don't believe the Internet should be a vehicle for mailing lists at all. Nobody should be allowed to sell a list on the Internet.

Mr. SCHUMER. Right.

Mr. LERNER. There should be a Federal law against that, period, under any circumstances. Certainly, it should not happen.

Mr. SCHUMER. Let me ask this: maybe there's a better way to solve the problem that the first panel talked about without, in effect, putting all these list people out of business. Why would—would it be feasible, and I guess I'd ask Sergeant Tyler and Mr. Barton this question, that before the list broker would send out the list to whoever requested it, that they check and make sure that the person who is requesting the list not have been convicted of a sexual crime? Now would that—that seems to me it does put some burden on the folks here, but it also solves the problem that Mr. Klass and others have talked about, and it might be a better way than just abolishing these lists. And as I understand, the legislation just abolishes the lists altogether? Yes, requires parental consent.

Mr. BARTON. Which we believe would essentially abolish the lists.

Mr. SCHUMER. Which you say would abolish the lists?

Mr. BARTON. Yes.

Mr. SCHUMER. What about that? Because I've devised other kinds of bills where you do put a burden on industry to check and make sure they're not doing anything wrong, and that seems to me to be—you know, I know how this evolved. The reporter used the name of this horrible man, got the list. But if the system I've proposed was in place, the reporter wouldn't have gotten the list using that alias. What do you think, Sergeant? Is it feasible?

Sergeant TYLER. There's presently major obstacles that would have to be overcome. At the Federal level, of course, Congress can mandate to give access to that type of criminal record history, because you make the laws. However, we've still got 50 States that also have their own criminal history files——

Mr. SCHUMER. Yes, but they are becoming more and more—I mean, I've been an advocate of this. I think information about criminals is very important, and under the NCIC and other systems——

Sergeant TYLER. Right.

Mr. SCHUMER. This is one place where even the NRA and I agree; they want to update lists on people who have committed crimes, so there could be their system of insta-check rather than the 5-day wait for the Brady bill. Well, we could do sort of a Brady bill for this and just make sure technologically it would be feasible.

Sergeant TYLER. When you have a chance to review my testimony, you'll see my major concern with this legislation, my concern actually is it diverts attention away from issues that really would offer protection for children——

Mr. SCHUMER. Right.

Sergeant TYLER [continuing]. And it's covered, some of the suggestions, in my testimony.

Mr. SCHUMER. OK, but, Sergeant, we could do both. We should be—it's such a horrible crime; we should be doing everything we can, not just say we have limited energy for one or the other.

Sergeant TYLER. Correct, and there was an allusion earlier to the NAMBL, North American Man-Boy Love Bulletin, giving instructions on how to find children, seduce children——

Mr. SCHUMER. Right.

Sergeant TYLER [continuing]. And so on. And they've never mentioned using mailing lists in the 14 years I've been a faithful subscriber to that publication, although not with the name of Toby Tyler.

Mr. SCHUMER. We won't tell anybody else, Sergeant Tyler.

Sergeant TYLER. So my name's not going to be on that particular list.

But the only instructional event, document, resource, on how to obtain these lists was on the KCBS show, which I saw. I witnessed it when it was on TV. And when I saw that, I'm thinking to myself, "Wow, this is scary. We can't even protect children from journalists." [Laughter.]

Mr. SCHUMER. But go back to my question——

Sergeant TYLER. Could anybody get those lists? She did, but she left a very significant paper trail that a rookie detective could easily follow.

Mr. SCHUMER. Right.

Sergeant TYLER. And pedophiles have been credited with being quite bright at this hearing; they are, and I just don't see them being stupid enough to go lay that kind of paper trail that's going to lead us right to them.

Mr. SCHUMER. But let me just go to my question again: Would it be feasible, from a law enforcement end and then from the business end, to say, before anyone was sent this list, they would be checked and see who the—obviously, they could create a—they might create an alias, you know.

Sergeant TYLER. I want to decline to give you a direct answer because I do not work in a recordkeeping function.

Mr. SCHUMER. Yes, OK.

Sergeant TYLER. My expertise lies specifically in the sexual abuse and exploitation of children.

Mr. SCHUMER. Right.

Sergeant TYLER. I don't think I'm qualified to give you an answer.

Mr. SCHUMER. OK, go ahead, Mr. Lerner.

Mr. LERNER. Yes, the answer to this is yes. There's no question about it. This list of known pedophiles should be given to every list company in America, and we should be required by law to eliminate that name from anybody we sell, not only that name, that address, just in case that pedophile uses another alias. So, certainly, that should be done.

Mr. SCHUMER. Right.

Mr. LERNER. It's a very simple matter.

Mr. SCHUMER. Now, Mr. Lerner—but a question, I'm sure if the first panel were back, they'd say, What if the pedophile used an alias?

Mr. LERNER. Fine.

Mr. SCHUMER. He said, "I am John Smith. Send it to me," and John Smith isn't on the list?

Mr. LERNER. Well, that's OK. John Smith doesn't have to be on the list; do it by address. I mean, if John Smith is going to——

Mr. SCHUMER. John Smith, Post Office Box 332.

Mr. LERNER. Listen, whatever information the Government has on the location of that pedophile, whether it be a post office box or an address, whatever that is, let us have it——

Mr. SCHUMER. Right.

Mr. LERNER [continuing]. And let us be punishable if we sell a list to——

Mr. SCHUMER. Yes.

Mr. LERNER [continuing]. Anybody at that address.

Mr. SCHUMER. Right.

Mr. LERNER. We agree 100 percent.

Mr. SCHUMER. OK. Well, I want to thank the panel.

I would ask this panel and the first panel—it seems to me we have a problem here; we ought to do something about it. The bill seems to me to do a lot of, at least according to the second panel, damage, and the question is, Will it do some good at the same time it does damage? And maybe there's another way to solve this problem that everyone can agree on, and I'd ask both panels to think about that.

Mr. MCCOLLUM. I would, too.

And, Mr. Siegel, I know you weren't asked a question.

Mr. SCHUMER. Mr. Chairman, just one other thing.

Mr. MCCOLLUM. Yes.

Mr. SCHUMER. Could I get unanimous consent for the other members on my side on the panel who might want to submit things into the record?

Mr. MCCOLLUM. Oh, certainly. Absolutely. Without objection.

You weren't asked a question, Mr. Siegel, up to this point, but I do want to make the comment that I believe what Mr. Lerner had to say earlier is probably something you would affirm, and I'd want to be sure we are. That is that colleges, universities, do utilize mailings at much younger than age 16. Am I correct in that assumption?

Mr. SIEGEL. Absolutely.

Mr. MCCOLLUM. So the 16 and above doesn't serve your purposes at all?

Mr. SIEGEL. That is correct.

Mr. MCCOLLUM. With regard to the comments that Mr. Schumer has made and also your offer, Mr. Cirilli, as well, I think we do need to explore this. It's been suggested, for example, that we might find a pattern in the chemical diversion laws we passed recently, which some of you have no familiarity with, obviously, but we tried to find ways to stop the chemical companies from giving away, selling, or whatever, precursor chemicals that allow some of the more exotic drugs that are a problem for us from being produced, like the methamphetamine, that we have used a methodology which involves a submission by those companies of people who come to solicit their business for these items who are not regularly well known to them, to an entity. And in your case, maybe it might be the Federal Trade Commission or something.

So those—I'm not suggesting we do this, but I'm suggesting that, along with those kinds of suggestions you made earlier, Mr. Cirilli, it would be helpful if all of you thought of some things that you might submit to us that would not be too onerous on the industry, but would be logical from the standpoint of trying to help us resolve this problem, in addition to those which Mr. Schumer was suggesting.

I want to thank you for coming——

Mr. BARTON. Mr. Chairman——

Mr. MCCOLLUM. Mr. Barton.

Mr. BARTON [continuing]. I just want to add that we agree and we support this concept, that we want to work with you all. The Federal Trade Commission we're working with on these issues, and they're very important. Thank you.

Mr. MCCOLLUM. I think all of us are interested in resolving these problems, and I don't think any of us are quite sure of exactly the right method of using it, though Mr. Franks' bill is innovative and perhaps still has some basis. There's several items in it I concur in, as you do.

Mr. Siegel, you wanted to comment before we adjourn?

Mr. SIEGEL. Mr. Chairman, I would ask permission to submit for the record a letter already sent to you by Kevin Keeley, the executive director of the National Association for College Admission Counseling, echoing most of the similar sentiments that I expressed this morning.

Mr. MCCOLLUM. Thank you.

[The information follows:]

National Association for College Admission Counseling
1631 Prince Street Alexandria, Virginia 22314-2818 (703) 836-2222 FAX (703) 836-8015

August 20, 1996

The Honorable Bill McCollum
U.S. House of Representatives
2266 Rayburn House Office Building
Washington, DC 20515-0908

Dear Congressman McCollum:

On behalf of the National Association for College Admission Counseling, representing more than 6,000 secondary school counselors and college and university admission officers, I am writing to express my grave concerns regarding the Children's Privacy Protection and Parental Empowerment Act of 1996 (H.R. 3508). The bill would prevent counselors from providing beneficial college admission information without first meeting a burdensome paperwork requirement.

Although we appreciate the intent of the legislation, which is to protect children, H.R. 3508 would actually damage students by depriving them of valuable scholarship and financial aid information from colleges and universities. Currently, the nation's 3,200 public and private colleges and universities send information directly to potential students. If H.R. 3508 becomes law, high school administrators, teachers and guidance counselors will have to send home a permission slip before a college could obtain needed information about prospective college-bound students.

As a result, H.R. 3508 would effectively:

- prevent colleges and universities from recruiting students who would be well matched with their campuses on the basis of grades, financial need, special interests, race, or religious background;
- prevent colleges and universities from identifying and contacting gifted and talented students who would be eligible to participate in advanced programs at the institutions;
- preclude students' obtaining essential financial aid information from colleges, banks and other source institutions and agencies;
- deprive some students of consideration for scholarships provided by corporations, nonprofit, civic, and religious organizations which depend on student lists to identify potential beneficiaries.

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- prevent tens of thousands of students who are part of lists developed by the National Merit Scholarship Corporation, The College Board, National Research Center for College and University Admissions, Black Achievement, and Hispanic Achievement, from becoming aware of special higher education opportunities designed especially for them.

Once again, on behalf of the thousands of counselors and students we serve, we urge you to make modifications to the legislation so that student access to vital information is not terminated. A key element of the college admission process is ensuring thorough communication between colleges and high school counselors, students and parents. Indeed, receiving introductory information from various colleges and universities is not only welcomed by curious students and their families, it has become a significant component of the formula for the successful search and selection of the college or university which the student will ultimately attend. H.R. 3508 represents an impediment to the sharing of this important information. Please do not allow H.R. 3508, however well-intentioned it may be, to hamper our students' efforts to address successfully what is already an imposing major decision in their lives.

Thank you for your consideration. If we can be of any assistance during your deliberations on H.R. 3508, please do not hesitate to call on us.

Sincerely,

Kevin D. Keeley
Executive Director

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Mr. MCCOLLUM. We thank all of you very much. This hearing is adjourned.

[Whereupon, at 12:45 p.m., the subcommittee adjourned.]

APPENDIX

STATEMENT OF HON. JOHN EDWARD PORTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, I appreciate the opportunity to submit testimony on H.R. 3508, the Children's Privacy Protection and Parental Empowerment Act.

I believe that this legislation, which would restrict the sale or purchase of personal information about children without parental consent, is certainly well-intentioned. One important objective of the bill is to prevent prisoners or convicted sex criminals from using mailing lists to locate children in order to harm them. In my opinion, the Congress should continue to enact stringent laws to restrict and punish any individual who harms, or attempts to harm, a child. However, there has never been a case of any commercial list being used to hurt a child. In fact, such information has actually helped promote the welfare of children—the National Center for Missing & Exploited Children has found dozens of children by using information published in lists.

I am also concerned that H.R. 3508, as now written, would have unintended negative consequences that would harm children by denying them information on educational opportunities and other beneficial activities. From an early age, children receive information on book clubs, educational magazines, youth groups, and sports leagues. This information would not be available if H.R. 3508 became law. As children grow older, most colleges and universities, as well as scholarship programs and institutions that provide student financial assistance, use direct mail lists to send information to students. Without this targeted information, many children will simply miss out on educational opportunities.

In addition, fewer high school students will be recognized for academic excellence and other significant achievements. Too often, I'm afraid, school officials and teachers will think that it is too much of an administrative burden to obtain permission from parents before nominating students for programs, such as the National Honor Society or "Who's Who Among American High School Students." Membership in these programs often plays a significant role in college admissions and scholarship benefits. It would be unfortunate if students did not get into the college of their choice or receive a scholarship because of an added administrative burden on their school.

Mr. Chairman, I want to protect children from dangerous individuals, but I also want to ensure that all children receive material on the countless opportunities available to them. As it is currently written, H.R. 3508 may cause more harm than good. I hope that these concerns can be addressed.

Susan L. Hennicks
President and Chief Executive Officer
360 East 22nd Street
Lombard, Illinois 60148-4985
Telephone 630.932.2751
Facsimile 630.889.5029

September 3, 1998

The Honorable Bill McCollum
U.S. House of Representatives
2266 Rayburn House Office Building
Washington, DC 20515

Dear Representative McCollum:

On behalf of Metromail Corporation, one of the nation's largest suppliers of direct marketing services, I'm writing to you to express my concern about the *Children's Privacy Protection and Parental Empowerment Act of 1998* (H.R. 3508/S. 1908). While we certainly support the laudable desire to protect children, this legislation would not accomplish that aim. Instead, the bill would have an extremely negative impact on the direct marketing industry.

This legislation, if enacted, would have the effect of criminalizing the sale or rental of any data that references the presence of children in households without having first obtained documented parental approval. This information is used by legitimate businesses and organizations -- Fortune 500 companies, non-profits, educational organizations and small businesses in your community -- to provide parents with money-saving coupons, merchandise offers and other information of value to families.

Americans have responded to direct marketing in terms that suggest little confusion about whether they value such offers. According to a comprehensive study commissioned by the Direct Marketing Association and conducted by the WEFA Group, direct marketing generated $1.1 trillion in sales in 1995, resulting in 19 million jobs. Consumer-related direct mail and telemarketing alone generated $385 billion in sales.

Motivating this legislation is a desire to ensure that individuals whose intent is to harm or abduct children cannot use direct marketing information to do so, but there is no evidence that suggests this is necessary.

A landmark report, *National Incidence Studies of Missing, Abducted, Runaway and Throwaway children*, issued by the Department of Justice in 1990, estimated that more than 114,000 children are abducted annually by non-family members. In fact, commercial mailing lists have been used to help locate missing children.

Moreover, we at Metromail have met with a number of child-safety experts and law enforcement officials, who agree that direct marketing databases do not provide the kind of information wanted by pedophiles or others whose intent is to harm children. The nation's largest and most reputable child advocacy organizations are focused on the very real and pervasive problems of poverty, health care, guns, gangs, drugs and the need for improved education.

The well-being of children is certainly an objective we all share. The proposed legislation, however, would not contribute to that goal. Conversely, it would deny legitimate businesses and organizations the ability to utilize important direct marketing data -- with significant economic consequences both in terms of sales and employment -- and would deny parents offers and information they clearly value.

Metromail and the direct marketing industry as a whole are sensitive to privacy issues that have been raised over the past several years. Accordingly, we at Metromail have continued to strengthen our own regulations governing data collection and distribution, which include the ability for consumers to "opt out" of being included on mailing and telemarketing lists through the Direct Marketing Association's mail and telephone preference services.

I hope you will permit me the opportunity to discuss these issues with you or a member of your staff before considering whether to support the proposed legislation.

Sincerely,

Susan L. Hennicks

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STATEMENT OF PAUL KROUSE, PUBLISHER, EDUCATIONAL COMMUNICATIONS, INC.

I appreciate the opportunity to express the views of Educational Communications Inc. (ECI), which publishes *Who's Who Among American High School Students*,* on H.R. 3508, the Children's Privacy Protection and Parental Empowerment Act of 1996.

We strongly support what we understand to be the objective of the legislation, protecting children from those who would abuse or exploit them. We applaud the efforts of the bill's sponsors to focus Congressional on this national horror and on the need to prevent such abuse and exploitation. However, we believe the legislation will not achieve its objective. Moreover, its unintended consequences would seriously restrict educational and other valuable opportunities available to the very children the bill seeks to help. We also believe the focus of this legislation will divert Congressional attention from legislative steps that truly will protect children. The legislation, if adopted, could hinder efforts to locate missing and exploited children. We, therefore, strongly oppose the legislation in its current form.

Educational Communications, Inc. Since 1967, ECI, through *Who's Who*, has honored over 12 million students for their achievements in academics, athletics, student leadership and community service. We also have awarded over $1,947,000 in scholarships; our scholarship program is one of the ten largest programs funded by a single private sector organization. The current edition of *Who's Who* honors 745,848 high school students representing approximately 18,000 of the 22,000 public, private and parochial high schools nationwide.

For almost 30 years, we have worked closely with educators and community organizations to identify and recognize outstanding high school students. Nominations for *Who's Who* come primarily from school administrators and teachers, guidance counselors and youth and community organizations. We operate under the guidance of a Committee on Ethics, Standards and Practices and subject to audits by an independent accounting firm. Our brochure, which sets forth the standards by which we operate, is attached for your further information.

Among other standards,

We do not make public the home addresses of students; and

We do not sell lists to others.

ECI May be Subject to the Bill's Broad Restrictions. Although we do not sell lists as such, under the bill as drafted, *Who's Who* could be considered a list broker. The bill defines a "list broker" as one who "provides mailing lists, computerized or telephone reference services, or the like containing personal information of children." Arguably, since we sell books (the publication *Who's Who*) containing personal information (name, school, grade, achievements) about children (approximately one-third of all listings are freshmen or sophomores in high school and probably are under the age of 16), we could be considered list brokers under the law, and therefore, subject to the bill's prior parental consent and other restrictions.

Other Potential Effects of the Legislation on ECI and Other Members of the Educational Community. We believe the bill would have a chilling effect on the teachers, community organizations, and others who supply the names and information by which we recognize students. The legislation creates the possibility of criminal or civil liability for any person who "knowingly distributes or receives" any personal information about a child "knowing or *having reason to believe*" that the information will be used to abuse or physically harm the child. Does a teacher who provides ECI with information about a deserving student have "reason to believe" that the information may be used to hurt a child, by virtue of the fact that the book can be viewed at thousands of private and public high schools, universities, and libraries across the country? The bill is unclear on this point and could lead those who provide us with nominations to decline to participate in the program.

The prior parental consent requirement also would cause many teachers and others to decline to participate in the *Who's Who* nominating process. Even though the consent requirement technically may not apply to them, we believe enactment of a federal consent requirement with criminal and civil penalties attached would make teachers and community organizations reluctant to nominate a child unless a parent first provided written consent. The potential liability simply would be too great. And the resulting paperwork burden likely would cause many teachers, administrators and community leaders to drop out of the program, thus depriving the young people in their care of the opportunity to be honored in *Who's Who* and to receive valuable scholarships.

Similarly, the parental consent requirement would result in many students being eliminated from consideration for *Who's Who* through inadvertence. In the rush of

* ECI also publishes *The National Dean's List* and *Who's Who Among America's Teachers.*

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a busy day, such forms are routinely lost, misplaced, overlooked or forgotten by families. Parents also might fail to respond to a consent request for other reasons, such as difficulties with reading or with the English language.

This would be especially tragic in those homes in which children are least likely to enjoy the active involvement of parents in their lives. Fewer young people would be recognized for their achievements; fewer scholarships would be offered to those who may need them most. And, far beyond the impact a consent requirement could have on *Who's Who*, it undoubtedly would inhibit the compilation of lists of children's names by others, thus depriving many children of a multitude of educational and entertainment publications that are marketed through the use of these lists.

Other Concerns About the Legislation. The bill would impose criminal liability (in the form of a fine and/or a jail term of up to one year) and civil liability (including statutory money damages of not less than $1,000) for a violation of any of its provisions. The legislation also provides that a winning plaintiff (but not a defendant) shall be awarded attorney's fees. This one-way fee shifting for the benefit of plaintiffs is especially troubling in light of the vague terms and potentially broad reach of the bill.

The bill also could open the door for class actions against a wide range of publishers, direct marketers, and others who use the kinds of information covered by the bill in their efforts to communicate with young people and their parents, based on the simple charge that by distributing information about a child—even in a publicly available medium like a newspaper honor roll or a book like *Who's Who* which is available at thousands of high schools, universities, and libraries nationwide—a person had "reason to believe" harm could result to a child.

We do not believe it is sufficient to be told that the bill is not intended to have this broad reach. Public laws should be drafted carefully and narrowly to achieve their desired objective. If the objective of this legislation is to prevent the abuse and exploitation of children, we believe that the measure falls woefully short. Further, it would have significant, adverse consequences for children and their parents, depriving many of them of communications from educational institutions and from the publishers and marketers who serve families.

Exempting "Educational" Activities From the Bill Is Not the Answer. Some have suggested that the bill could be modified to exempt the sale or distribution of lists for educational purposes or for other worthy purposes. We believe this is shortsighted. While such an exemption may enable children to continue to receive materials from formal educational institutions, it would limit the ability of publishers like Grolier—which publishes the Disney Book Club and Dr. Seuss books—and others who provide opportunities for children, such as Highlights for Kids, Scholastic magazine, Sports Illustrated for Kids, and Seventeen magazine, to reach young children with materials that could enrich their lives.

To Protect Children, the Focus of the Legislation Should Be Changed. It is our strong belief—after 30 years of experience working with children and the educators and marketers who serve them, and after reading the literature and talking with experts on the subject of pedophiles—that if the sponsors truly want to protect children, the legislation should shift its focus. We would welcome the opportunity to work with the Subcommittee to draft such legislation. For instance, we would strongly support legislation that:

Strengthens current efforts to establish a national FBI registry of sex offenders and to notify communities when these convicted criminals are within their midst;

Imposes criminal penalties for misuse of a mailing list to harm a child or for selling a list to someone in the FBI's database; and

Establishes requirements for those who compile and provide mailing lists to legitimate organizations, to ensure that (1) these lists do not fall into the wrong hands, (2) those who compile the lists use the information they possess to assist law enforcement and others in efforts to locate missing children, and (3) parents are given the opportunity to remove their children's names from mailing lists.

We also believe that prison sentences for those who abuse children should be increased dramatically. Particularly in light of the rate of recidivism of these offenders, we believe there should be no less than a "two strikes and you're out" policy.

Conclusion. We at ECI have built our business around honoring the achievements of students and their teachers and assisting students in furthering their education. On a personal note, I would add that as the father of three girls and one boy, and the grandfather of three very young boys, I would never—no matter what business interests were at stake—oppose legislation that provided meaningful protection for children. I believe H.R. 3508 and its Senate companion bill, S. 1908, though well-intended, will not serve this objective but will, instead, harm the very children it seeks to protect.

Who's Who Review

A Summary of Objectives, Policies and Programs

Since 1967, *Who's Who Among American High School Students*® has been committed to honoring outstanding students for their achievements in academics, athletics, school and community service. Our first edition recognized 15,000 students from 4,000 high schools; the current, 29th edition, published in eighteen regional volumes, honors 745,848 high school students representing approximately 18,000 of the 22,000 public, private and parochial high schools nationwide.

The growth, acceptance and preeminence of *Who's Who Among American High School Students* as the leading student recognition publication in the nation can be attributed to the involvement of educators in the policy-making areas of our programs.

Specifically, we must acknowledge the contributions of our Committee on Ethics, Standards and Practices, a group of distinguished educators representing secondary and post-secondary education.

The standards developed by the committee have been used as a model by several education associations who have created their own guidelines for evaluating student recognition programs on a uniform basis. *Who's Who* is proud of its well-documented leadership role in promoting standards and ethics for all student recognition programs.

The *Who's Who* standards are distributed to 80,000 high school principals, guidance counselors and other faculty members each year. The committee meets regularly and brings a perspective to the companys which assures students and school administrators that *Who's Who* policies and programs are compatible with the objectives of the educational community.

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Programs and Benefits for Students

Scholarship Awards:
From $4,000 in 1968 to over $180,000 annually

The Educational Communications Scholarship Foundation®, a not-for-profit organization funded by the publishing company, sponsors two scholarship award programs which award over $180,000 in scholarships each year. More than $1,767,000 has been funded to date.

The Educational Communications Scholarship Foundation's program represents one of the only private scholarship programs funded by a major private sector organization. The Foundation is listed in numerous directories on financial aid and scholarships.

The College Referral Service® (CRS):
Links students with colleges

Each year students receive a catalog listing 1,800 four-year colleges and universities. They may complete a form indicating which institutions they wish to receive one of these literature award. This service links interested students with colleges and universities.

Several hundred colleges have indicated that the CRS and the publication are valuable reference sources in their recruitment programs. Literature from colleges is available for inspection.

Grants-in-Aid:
Financial support for organizations who work with or for students

Since 1973, we have funded grants to youth and educational organizations to support their student programs and scholarships. A partial listing of grants issued or committed to date of $575,000 appears in this review.

Local Newspaper Publicity:
Additional recognition for honor students

Over 2,000 newspapers nationwide receive reports of their local students featured in the publication with appropriate background information. Photos and interviews are also included in these releases.

Annual Survey of High Achievers®:
The views of student leaders are as important as their achievements

Since 1969, we have polled the attitudes and opinions of over 30,000 students on various issues. The study provides students with a [illegible] and effective forum on public issues. Responses on the [illegible] in government, education and the press.

College-Bound Digest®:
What students need to know

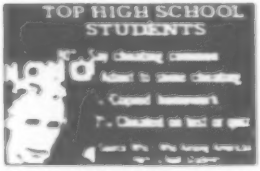
A compilation of articles written by professional [illegible] of interest to college-bound students. The Digest also contains a [illegible] section of [illegible] and is made available free to [illegible] guidance offices.

Teachers Nomination Program:
The Best Teachers in America Selected by the Best Students

All students listed in [illegible] are nominated one of their teachers to be [illegible] for recognition in Who's Who Among America's Teachers. These students acknowledge their teachers' contributions and [illegible] rights, ability in their success and growth.

Memberships:

American Association for Higher Education
American Association of School Administrators
American Library Association
American School Counselors Association
Better Business Bureau of Chicago & Northern Illinois, Inc.
Distributive Education Clubs of America, National Advisory Board
Educational Press Association
National Association of Student Financial Aid Administrators
National 4-H Foundation, Executive Sponsor
National School Public Relations Association



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Major Policies and Procedures

Free Book Program.

Guarantees extensive recognition through wide circulation.

Who's Who sponsors the largest Free Book Program of any publisher or any field. The book, in each title to all participating high schools and youth organizations and offered free to all 7,500 libraries and to all four-year colleges and universities.

This extensive distribution system provides meaningful, national recognition for listed students among institutions traditionally concerned with students' achievements, and makes it convenient for students to view their published biography without purchasing the book.

The recognition and reference purposes of Who's Who Among American High School Students have been acknowledged in the favorable review of the publication by the Reference and Subscription Books Reviews Committee of the American Library Association.

Financial Policies.

Legitimate honors do not cost the recipient money.

There are no financial requirements whatsoever contingent upon recognition in Who's Who Among American High School Students.

For students who do purchase the publication or any related awards, satisfaction is guaranteed. Refunds are always issued on request.

Nominating Procedures.

Representation from all areas of student achievement.

Each year, all 22,000 public, private and parochial high schools are invited to nominate students who have achieved a "B" grade point average or better and demonstrated leadership in academic, athletic, [illegible] activities.

Approximately 13,000 high schools participate in our program by nominating students. An additional 5,000 to 5,000 schools are represented by their outstanding students as a result of nominations received from homes, hobby/youth organizations, churches, youth organizations, scholarship agencies and civic and service groups. Many of our editors choose youth groups participate in our program by nominating their student leaders.

Cartoon commissioned by Who's Who Among American High School Students for the cover of their 1994 edition.

Editing.

Maintains the integrity of the format.

When biographic forms are submitted for publication, they are all reviewed to maintain compliance with our high standards. In the past 19 years, 412,222 students were disqualified by our editors because they did not meet our standards, including over 90,500 students who submitted the publication. More than $2,819,000 in orders was returned to these students. Our standards are never compromised by the profit motive. (Academic verification available upon request.)

Who's Who Student Profile

Statistics from 1995 Edition

General Listing
Total Number of Students = 745,846
Seniors = 180,219
Juniors = 275,923
Sophomores = 205,706
Freshmen = 83,931
Who's Who Students as Percentage of 12,000,000 High School Students Enrolled Nationwide = 6%
Females = 65%
Males = 35%

Academics
Grade Point Average (% rounded)
"A" to "A" = 63%
"B+" to "B" = 37%
Honor Roll = 587,678
National Honor Society = 176,395
Valedictorian/Salutatorian = 10,194

Leadership Activities
Student Council = 99,085
Senior Class Officers = 30,530
Junior Class Officers = 52,582
Sophomore Class Officers = 61,546
Freshman Class Officers = 60,319

Major Vocational Organizations
4-H = 41,842
National FFA Organization = 25,700
Distributive Education Clubs of America = 7,472
Business Professionals of America = 9,856

Athletics
Basketball = 134,170
Track = 100,350
Cheerleading/Pom Pon = 74,306
Volleyball = 68,132
Football = 65,265
Soccer = 50,230
Baseball = 46,834
Tennis = 45,974
Cross Country = 42,562
Wrestling = 16,861

Music/Performing Arts
Orchestra/Band = 104,030
Chorus = 124,911
Drama = 73,391
School Play/Stage Crew = 111,194

Miscellaneous
Church/Temple Activities = 292,188
Yearbook = 84,611
School Paper = 62,754
Students Against Driving Drunk = 76,371

Verification of Data.

To maximize the accuracy of all reported data.

A nationally recognized accounting firm conducts periodic independent audits of published biographical data. Previous audits reveal that up to 96% percent of the data published was substantially accurate. (Complete audits available upon request.)

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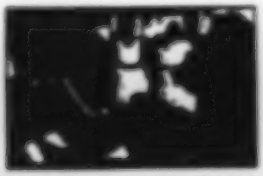
Grants to Youth and Educational Organizations*



Also from Educational Communications, Inc.

The National Dean's List

Who's Who Among America's Teachers

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